Supreme Court, U.S.
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80-1045

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION,
Petitioners

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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Dated: December 24, 1980

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QUESTIONS PRESENTED FOR REVIEW

1. Does a union-instigated work stoppage motivated by its political disapproval of an employer's international trade relationships involve or grow out of a "labor dispute" within the meaning of Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104.

2. Whether a federal district court has jurisdiction to enjoin a strike precipitated, at least in part, by a disagreement about the employer's authority to decide with whom it will do business, where the applicable collective bargaining agreement, containing a broad no-strike clause and a provision for mandatory and binding arbitration of all "matters under dispute" between the union and employer, expressly reserves to the employer complete control over the management of its business and direction of its work force.

3. Whether this Court should reconsider its decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), in light of its application by lower courts in opinions that effectively deprive an employer of the benefit of the union's promise not to strike in return for the employer's commitment to arbitrate disputes between the parties.*

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* The following parties participated in the proceedings in the United States Court of Appeals for the Fifth Circuit: Jacksonville Bulk Terminals, Inc.; Hooker Chemical Corporation; Occidental Petroleum Corporation; International Longshoremen's Association; Local Union 1408, International Longshoremen's Association; Landon Williams, individually and as President of Local 1408; Melvin Andrews, individually and as Vice-President of Local 1408; Oliver Collins, individually and as Treasurer of Local 1408; Paul Fields, individually and as Business Agent of Local 1408; and all other members of Local 1408 of the International Longshoremen's Association, or of any other labor organization acting in concert with the named defendants.

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v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

Petitioners, Jacksonville Bulk Terminals, Inc., Hooker Chemical Corporation and Occidental Petroleum Corporation, respectfully pray that a Writ of Certiorari issue to review the opinion, judgment and order of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported officially at 626 F.2d 455 and is reproduced herein as Ap-

pendix A. The opinion rendered by the district court, which is unreported, is reproduced herein as Appendix B.

JURISDICTION

The judgment of the court of appeals was entered on September 25, 1980 (Appendix A). Petitioners invoke the Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved most directly herein are as follows:

United States Code, Title 29:

§ 104. *Enumeration of specific acts not subject to restraining orders or injunctions*

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

§ 113. *Definition of terms and words used in chapter*

. . . .

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Other relevant statutory provisions involved are Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185 and Section 2(9) of the National Labor Relations Act, 29 U.S.C. § 152(9); these are reproduced in Appendix C.

STATEMENT OF THE CASE

This case arises from a dispute between Respondents, the International Longshoremen's Association, its Local Union 1408, and their officers and agents (the "Union"), and Petitioners, Jacksonville Bulk Terminals, Inc. ("JBT"), Hooker Chemical Corporation ("Hooker"), and Occidental Petroleum Corporation ("Occidental"), over the shipment of superphosphoric acid ("SPA") to the Soviet Union.[1] JBT operates a bulk marine shipping termonal at the Port of Jacksonville, Florida, from which SPA produced by Hooker is shipped to the Soviet Union pursuant to a bilateral trade agreement between Occidental and the Soviet Union. Respondents represent longhroremen in the Port of Jacksonville who work out of a hiring hall maintained by Local 1408.

As a member of the Jacksonville Maritime Association, Inc., JBT has a current collective bargaining agreement with Respondents covering longshoring and related activities at the Port of Jacksonville. This collective bargaining agreement contains a clause prescribing a mandatory grievance and arbitration procedure to be followed in all disputes between JBT and Respondents. This clause states:

> 15. (B) Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall, no later than 48 hours after such

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[1] JBT is a wholly-owned subsidiary of Oxy Chemical Corporation, which is a subsidiary of Hooker. Ownership of all these corporations is ultimately vested in Occidental (App. B p. 30a).

> discussions, be referred in writing covering the entire grievance in a Port Grievance Committee . . . .
>
> . . . .
>
> A majority decision of this Committee shall be final and binding on both parties . . . .

(App. A, p. 7a). In addition, the collective bargaining agreement includes an explicit no-strike clause which provides:

> [T]he Union agrees there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown or any other interference or stoppage, total or partial, of the Employer's operation for any cause whatsoever; such causes including but not limited to, unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. The Union shall not be financially responsible for strikes or walkouts not authorized or assented to by the Union.

(App. A, p. 7a). The collective bargaining agreement also contains a clause expressly reserving to JBT complete control over the management of its business and the direction of its work force:[2]

> 13. (F) The Management of the Employer's business and the direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically provided in the Agreement, all of the rights, powers and authority Employer had prior to signing of this Agreement are retained by Employer.

On January 4, 1980, the President of the United States announced that certain restrictions would be im-

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[2] A copy of this collective bargaining agreement was attached as Exhibit A to Petitioners' complaint filed in the district court.

posed on trade with the Soviet Union in retaliation for the Soviet Union's invasion of Afghanistan. Although SPA was not included in that Presidential embargo,[3] Respondent International adopted a resolution urging its members to refuse to load any cargo shipped to or from the Soviet Union. Respondent Local 1408 complied with this resolution by refusing to load three ships which arrived at JBT's Jacksonville terminal during January 1980 to receive SPA for transport to the Soviet Union.

In response to the refusal by Respondent to perform the work requested by JBT, Petitioners filed a complaint in the United States District Court for the Middle District of Florida, pursuant to Section 301 of the Labor-Management Relations Act, as amended, 29 U.S.C. § 185. Petitioners sought both damages and injunctive relief against the Respondents' continued work stoppage. Noting that the underlying dispute between Respondents and Petitioners was not a "labor dispute" within the meaning of Section 13(c) of the Norris-LaGuardia Act, 29 U.S.C. § 113(c), because the dispute involved a political issue, the district court concluded that it was not precluded by Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, from granting the injunctive relief requested by Petitioners (App. B, pp. 32a-33a). The district court issued a preliminary injunction restraining Respondents from calling, instigating, directing, encouraging or participating in any strike, or a work stoppage relating to the three vessels then in the Port of Jacksonville, and ordered the parties to arbitrate their dispute in accordance with the terms of paragraph 15(B) of their collective bargaining agreement (App. B, pp. 26a-27a, 35a).

The Fifth Circuit, on September 25, 1980, vacated the preliminary injunction issued by the district court, finding that Respondents' work stoppage, even though it was

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[3] On February 25, 1980, the embargo was extended to include SPA along with other phosphates (App. A, pp. 7a-8a).

called to further the political goals of the Union, did "involve or grow out of [a] labor dispute" for purposes of the Norris-LaGuardia Act. Accordingly, the court of appeals decided that the anti-injunction policy of the Norris-LaGuardia Act governed the case unless the exception to that policy expounded in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), was applicable. The Fifth Circuit concluded, however, that the *Boys Markets* exception was not applicable to the facts of this case because Respondents' strike was not "over" any dispute that Respondents had agreed to arbitrate within the meaning of this Court's decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976) (App. A, p. 21a).

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE COURT BELOW CONCERNING AN IMPORTANT QUESTION OF FEDERAL STATUTORY CONSTRUCTION IS IN DIRECT CONFLICT WITH INDISTINGUISHABLE DECISIONS OF OTHER APPELLATE COURTS

In deciding that a strike called to further the political goals of a union falls within the purview of 29 U.S.C. § 104 as a case "involving or growing out of any labor dispute," the Fifth Circuit below recognized that its decision was in direct conflict with the holding of the Second Circuit in *Khedivial Line* v. *Seafarers' International Union*, 278 F.2d 49, 51 (2d Cir. 1960) (App. A, p. 16a). In that case the Seafarers' Union and the ILA struck and picketed a cargo vessel owned by a private corporation of the United Arab Republic in retaliation for a blacklist instituted by the UAR against vessels which had carried cargo to Israel. Overturning a district court decision that the Norris-LaGuardia Act precluded the issuance of an injunction against picketing in these circumstances, the Second Circuit found that as broad "as the Act's definition of 'labor dispute' is it is not broad enough to encompass a dispute solely with

the policies of the government of the shipowner." 278 F.2d at 51. According to the Second Circuit, even if it were assumed that the Seafarers' dispute was over the loss of jobs to American seamen resulting from the United Arab Republic's blacklist, it was not a labor dispute because "whatever had been done here was the United Arab Republic's doing, not plaintiff's." 278 F.2d at 51.

The decision of the Fifth Circuit below is also at odds with the holding of the Fourth Circuit in *NLRB* v. *International Longshoremen's Association* (*Ocean Shipping*), 332 F.2d 992 (4th Cir. 1964). In that case, the Fourth Circuit found that the ILA's refusal to load ships trading with Cuba was not a "labor dispute" within the meaning of Section 2(9) of the National Labor Relations Act, 29 U.S.C. § 152(9).[4] Furthermore, because the definition of "labor dispute" set forth in Section 2(9) of the National Labor Relations Act is almost identical to the operative definition of "labor dispute" under Section 13(c) of the Norris-LaGuardia Act, 29 U.S.C. § 113(c) (App. C), the Fifth Circuit's divergence in the instant

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[4] In *Ocean Shipping* the Fourth Circuit reasoned as follows in arriving at the conclusion that no "labor dispute" was involved:

> Essentially, Ocean's grievance relates to actions of ILA which are political in nature. As the NLRB found, ILA was 'implementing a 'clearly defined policy calculated to eliminate trade with Cuba.' Dissatisfaction with ILA's policy of refusing to work ships that have engaged in trade with Cuba does not constitute a controversy grounded in the 'terms and conditions of employment.' Not every activity of a labor organization, not even every controversy in which it may become involved, is a 'labor dispute' within the statutory meaning. Cf. N.L.R.B. v. Miranda Fuel Co., 326 F.2d 172, 180 (2d Cir. 1963). Terms and conditions of employment are not in dispute here. The union activity here pertains to a general political question, in which ILA shares an interest with all citizens. It is not seeking to alter any terms or conditions of employment.

332 F.2d at 995-96.

case from the Fourth Circuit's interpretation of "labor dispute" in *Ocean Shipping* violates the principle of statutory construction which holds that statutes *in pari materia* should be interpreted in a like manner. *See Northcross* v. *Board of Education*, 412 U.S. 427, 428 (1973).[5]

That these conflicting decisions troubled the Fifth Circuit in the instant case[6] is evident by its failure to articulate how its construction of "labor dispute" to include political differences of the kind at issue in this case can be reconciled with the statutory definition set forth in the Norris-LaGuardia Act. Given this open disagreement among the circuits as to the scope of the anti-injunction prohibition of this statute, and the Fifth Circuit's unwarranted deviation from its clear language, review of the judgment below by this Court is justified to clarify an important question of federal court jurisdiction.

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[5] This principle of statutory construction has been applied directly to the provisions at issue in this case. *See National Maritime Union* v. *NLRB*, 342 F.2d 538, 541 (2d Cir.), *cert. denied*, 382 U.S. 835 (1965), where the Second Circuit found that since the operative definitions of "labor dispute" in both statutes are "virtually identical," they should be construed consistently with one another.

[6] The court acknowledged the existence of contrary precedent, even within the Fifth Circuit. *West Gulf Maritime Association* v. *International Longshoremen's Association*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd without opinion*, 531 F.2d 574 (5th Cir. 1976) (App. A, p. 15a). *See also Harrington & Co., Inc.* v. *International Longshoremen's Association*, 356 F. Supp. 1079 (S.D. Fla. 1973). *Cf. United States Steel Corp.* v. *United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975), *cert. denied*, 428 U.S. 910 (1976).

II. THE DECISION OF THE LOWER COURT MISAPPLIED THE EXCEPTION TO THE NORRIS-LAGUARDIA ANTI-INJUNCTION POLICY REFINED BY THIS COURT IN *BOYS MARKETS* AND *BUFFALO FORGE*

Having decided that the dispute between Respondents and JBT fell within the purview of the Norris-LaGuardia Act, the Fifth Circuit further concluded that strict adherence to the anti-injunction rule of Norris-LaGuardia was necessary because the exception to that rule established by *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), did not apply on the facts of this case. Examining the criteria for issuance of a *Boys Markets* injunction outlined by this Court both in *Boys Markets* and in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), the Fifth Circuit decided that an injunction could not be issued in the instant case because the Respondents' work stoppage was not "over any dispute between the Union and the employer that was . . . subject to the arbitration provisions of . . . [their] contract." 428 U.S. at 407.

The analysis of the court below ignores the fact that, in determining whether the dispute underlying a strike concerns an arbitrable matter, this Court has instructed lower courts to look at the entire bargaining agreement to see whether the strike had "the purpose or the effect of denying or evading an obligation to arbitrate or of depriving the employer of its bargain." *Buffalo Forge, supra*, 428 U.S. at 408. Furthermore, it disregards the rule that in making this determination, the court is obliged to resolve doubts in favor of the often announced presumption of arbitrability. *See, e.g., Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 377-78 (1974).

Although the Respondents' work stoppage was intended primarily as a protest against the Soviet interven-

tion in Afghanistan, it had, in addition, both the purpose and effect of precluding Petitioners from doing business with the Soviet Union. As paragraph 13(F) of the collective bargaining agreement reflects, however, JBT bargained for and received explicit recognition by Respondents of its right to manage its own business. Such a right has traditionally included the right to decide with whom the employer will do business. *See generally Textile Workers Union* v. *Darlington Manufacturing Co.*, 380 U.S. 263, 268, 270 (1965). Any disagreement between JBT and Respondents about the scope of the authority specifically reserved by JBT under paragraph 13(F), or about JBT's exercise of this authority, was subject to mandatory arbitration pursuant to paragraph 15(B) of the parties' collective bargaining agreement. Indeed, in paragraph 15(B) JBT specifically acceded to binding arbitration of such matters along with all "matters under dispute." Reciprocally, Respondents guaranteed in paragraph 15(A)(1) of the agreement that they would forebear engaging in "any strike of any kind or degree whatsoever . . . for any cause whatsoever" during the term of the contract. The union's strike was "over" an arbitrable issue because the parties disagreed over the application of paragraph 13(F), which on its face gives solely to JBT the right to decide with whom it does business. As such, the Union's strike prior to arbitration evaded the employer's right to arbitration and operated to deprive the employer of its bargain. Hence, the Fifth Circuit below misapplied the principles of *Boys Markets* and *Buffalo Forge*, effectively negating the policy underlying Section 301 expressed by this Court that "unions as well as employers should be bound to collective bargaining agreements . . . [and] that there be a procedure for making such agreements enforceable in the Courts. . . ." *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 453 (1957).

III. THIS COURT SHOULD RECONSIDER ITS HOLDING IN *BUFFALO FORGE* IN LIGHT OF ITS EFFECTIVE DENIAL TO EMPLOYERS OF THE *QUID PRO QUO* FOR THEIR COMMITMENTS TO ARBITRATE

The practical effect of the Fifth Circuit's opinion is to permit unions to engage in political strikes, despite their prior pledge in collective bargaining agreements not to strike "for any reason whatsoever." That such a result defeats the employer's expectation of an "assurance of uninterrupted operation during the term of the agreement," *Lincoln Mills*, 353 U.S. at 454, is manifest. It is similarly clear that this result is inherently disruptive of the goal of national labor policy favoring peaceful resolution of labor disputes.

This case thus provides an appropriate vehicle for reconsideration of *Buffalo Forge* as inconsistent with national labor policy to the extent that it has been read as permitting, outside the arena of the sympathy strike situation presented in *Buffalo Forge*, union economic action in breach of a no-strike clause in cases where there is doubt about the arbitrability of the underlying dispute. *See Afroyim* v. *Rusk*, 387 U.S. 253, 255 (1967).

Indeed, this case clearly shows the unfortunate results obtained when the union's promise not to strike, the *quid pro quo* for the employer's agreement to submit to binding arbitration, is divided into two parts. *Buffalo Forge*, 428 U.S. at 413 (Stevens, J., dissenting). Recognizing the strength of the dissent in *Buffalo Forge*, most commentators have agreed that the Court's decision deprives employers of a critical element of their bargain and, accordingly, undermines the incentive of employers to agree to submit disputes to arbitration in exchange for a union's no-strike pledge.[7]

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[7] *See generally* Gould, "On Labor Injunctions Pending Arbirtation: Recasting Buffalo Forge," 30 Stan. L. Rev. 533 (1978); Lowden & Flaherty, "Sympathy Strikes, Arbitration Policy, and the Enforceability of No-Strike Agreements—An Analysis of Buffalo

The Fifth Circuit's opinion further demonstrates that the result feared by the *Buffalo Forge* majority, "massive" entry by the courts into the business of contract interpretation, has nonetheless occurred. 428 U.S. at 414.[8] Since *Buffalo Forge*, in fact, a district court's task has become much more difficult, given the requirement that the court analyze every contract provision that the employer claims makes the underlying dispute arbitrable.

The instant case establishes a new and heretofore unexpected economic weapon. The Fifth Circuit's decision permits a union to strike for any reason, including political disagreement with the employer's choice of customers, irrespective of its no-strike pledge, unless the employer can convince a district court that the work stoppage was prompted by a grievance over a specific term in the collective bargaining agreement. Such a result eviscerates the presumption of arbitrability in labor disputes, and provides unions with a weapon not contemplated by the Act or by federal labor policy. It is submitted that this Court, in consideration of the experience gleaned from subsequent litigation, should reevaluate the wisdom of its decision in *Buffalo Forge* and clarify its intended dimensions, and that the instant case appropriately raises the issues and concerns for that reevaluation.

Forge," 45 Geo. Wash. L. Rev. 633 (1977); Comment, "Labor Law—Availability of Injunctive Relief to Restrain Sympathy Strikes," 43 Mo. L. Rev. 503 (1978); Smith, "The Supreme Court, Boys Markets Labor Injunctions and Sympathy Work Stoppages," 44 U. Chi. L. Rev. 321 (1977). *Contra*, Freed, "Injunctions Against Sympathy Strikes: In Defense of Buffalo Forge," 54 N. Y. U. L. Rev. 289 (1979).

[8] *See, e.g., Waller Brothers Stone Co.* v. *Steelworkers*, 620 F.2d 132 (6th Cir. 1980), where the appellate court reversed the district court on the basis of the latter's interpretation of language in a collective bargaining agreement which, according to the district court, showed that the dispute causing that strike was arbitrable. *See also Complete Auto Transit, Inc.* v. *Reis*, 614 F.2d 1110 (6th Cir. 1980); *Design and Manufacturing Corp.* v. *Auto Workers Local 2042*, 608 F.2d 767 (7th Cir. 1979).

CONCLUSION

For the foregoing reasons, Petitioners pray that a Writ of Certiorari be issued to review the judgment and decision of the United States Court of Appeals for the Fifth Circuit in this case.

Respectfully submitted,

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Dated: December 24, 1980

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

Nos. 80-3111, 80-5089

NEW ORLEANS STEAMSHIP ASSOCIATION, a corporation, and TTT STEVEDORES OF LOUISIANA, INC., a corporation,

Plaintiffs-Appellees,

v.

GENERAL LONGSHORE WORKERS, ILA LOCAL UNION NO. 1418, ETC., *et al.*,

Defendants-Appellants.

JACKSONVILLE BULK TERMINALS, INC., HOOKER CHEMICAL CORPORATION AND OCCIDENTAL PETROLEUM COMPANY,

Plaintiffs-Appellees,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL UNION 1408, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,

Defendants-Appellants.

Sept. 25, 1980

Appeal from the United States District Court for the Middle District of Florida

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Before RUBIN, HENDERSON and REAVLEY, Circuit Judges.

ALVIN B. RUBIN, Circuit Judge:

Unions and their members expressed their political views by refusing to load cargo aboard ships bound for a foreign nation whose actions they wished to condemn. Each union had a collective bargaining agreement with an American firm forbidding work stoppages and requiring the arbitration of disputes. Following the national labor policy determined by Congress, we conclude that a federal district court may by injunction enforce an arbitration award holding such a work stoppage invalid as violating the collective bargaining agreement but that it may not enjoin the union's action pending arbitration or extend an arbitrator's decree to apply to future cases no matter how similar they may appear likely to be. We also conclude that such an injunction does not violate the first amendment rights of the union and its members or impose involuntary servitude on them.

I.

On January 4, 1980, the President of the United States stated that, because of the Soviet Union's invasion of Afghanistan, he had decided "to halt or reduce exports" of grain to the Soviet Union. Pursuant to the authority given him by the Export Administration Act, 50 U.S.C.App. § 2401, *et seq.* (1979), he later issued directives that implemented an embargo against grain shipments to the Soviet Union, but he excluded from it the outstanding amount of unshipped grain committed under a 1975 agreement between the United States and the Soviet Union on the supply of grain. Imports were not affected.

Shortly thereafter, in his own response to the invasion of Afghanistan by the Soviet Union and what he perceived as a threat to world peace and the security of the United States, the International President of the Inter-

national Longshoremen's Association (ILA), Thomas U. Gleason, announced that he was instructing all ILA local unions on the Atlantic and Gulf Coasts to boycott all shipments to the Soviet Union of any materials including grain. The ILA also adopted a resolution that its members would not handle any cargo bound to or coming from the Soviet Union. The ILA boycott was, therefore, broader than the Presidential directive and prevented not only the loading of grain and other cargo licensed for export and exempted from or not covered by the Presidential embargo but also the unloading of cargo arriving from Russia. The resolution was adopted to express the conscience of union workers against contributing to the economic or military well-being of a nation that they considered a serious threat to their own country. It was not motivated by any hope for economic gain or by any dispute with any employer members, but was purely a political protest. No action was sought from the employers of union members and nothing that these employers might do could have eliminated the cause of the boycott.

The motor vessel JULIA L arrived at the Continental Grain elevator in Westwego, Louisiana, which is near New Orleans, in the latter part of January. Continental obtained an export license from the Department of Commerce for 177,000 bushels of corn to be shipped to Russia. Continental then hired TTT Stevedores to load the corn upon the M/V JULIA L. TTT Stevedores and a number of other firms who employ longshoremen are members of the New Orleans Steamship Association (NOSSA) and are parties to the collective bargaining agreements between NOSSA and the several ILA locals whose members work in the Port of New Orleans.

On January 23, TTT Stevedores attempted to hire the necessary gang under the terms of the 1977-80 Deep-Sea Agreement between NOSSA and Longshore Workers ILA Local Unions Nos. 1418 and 1419; a clerk under the

terms of a separate 1977-80 Agreement between NOSSA and Clerks and Checkers Local No. 1497 of the ILA; and a waterboy under the terms of yet another contract, the 1977-80 Deep-Sea Agreement between NOSSA and the Sack-Sewers, Sweepers, Waterboys and Coopers Union, ILA Locals No. 1683 and 1802. Each of the ILA locals refused to load grain aboard the JULIA L because the vessel was bound for the Soviet Union.

Each of the three collective bargaining agreements contains an identical no-strike clause and each contains a clause, identical in substance, requiring that all contractual grievances and disputes be submitted to arbitration.[1] Therefore, NOSSA and TTT Stevedores invoked procedures for expedited arbitration under each of the three collective bargaining agreements, charging that the work stoppage on the M/V JULIA L violated the unions' "no-strike" commitment. Three separate arbitration proceedings were convened. The grieving parties demanded

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[1] In pertinent part, the language is as follows:

"(a) *No Strikes—No Lockouts*

There shall be no strikes, work stoppages, nor shall there be any lockouts.

(b) *Disputes Procedure and Arbitration*

The parties accept the principle that any dispute involving the interpretation or application of the terms of this agreement shall be resolved in an orderly and expeditious manner. They commit themselves to the procedure outlined below . . . and failure to deal with disputes under this disputes procedure shall constitute a violation of this agreement.

(c) These steps shall be followed to insure prompt resolution of disputes.

* * * *

The arbitrator's authority shall be limited to interpretation and application of the terms of this agreement . . . . The arbitrator shall have no authority to render decisions which have the effect of adding to, subtracting from, or otherwise modifying the terms of this Agreement."

"cease and desist" orders from each of the three arbitrators directing that the local unions:

> ". . . cease and desist from engaging in any strike or work stoppage in connection with the loading or unloading of cargo aboard the motor vessel JULIA L at the Westwego Continental Grain Elevator, *or from engaging in any other strikes or work stoppages in connection with loading or unloading Russian vessels and/or Russian cargo* . . . . (Emphasis added.)

Following an initial postponement of two days at the unions' request, a separate arbitration hearing under each agreement was held on January 26, 1980, one by Arbitrator John F. Caraway, another by Arbitrator John J. Maxwell and the third by Arbitrator John J. McAulay. The unions did not participate in the hearings except to make an initial appearance for the purpose of submitting a written statement to the arbitrators. NOSSA and TTT Stevedores submitted evidence at each hearing.

Each arbitrator issued a separate award. Each of them found that the ILA boycott of exempt Russian grain violated the no-strike clause in each contract. Each arbitrator issued a "cease and desist" order, but the orders differed in their terms.

The arbitrator appointed under NOSSA's Deep-Sea agreement with the Sack-Sewers, John J. McAulay, made his order applicable to ". . . any work stoppage in violation of the Deep-Sea contract . . . with reference to grain or other cargo having a U.S. Export License . . . ." The arbitrator appointed under the General Longshore Workers Agreement, John F. Caraway, and the arbitrator appointed under the Clerks Agreement, John J. Maxwell, required the locals involved only to cease from strikes and work stoppages in connection with the loading or unloading of exempt grain aboard the JULIA L.

When the various ILA locals continued to refuse to load grain aboard the JULIA L, NOSSA and TTT Stevedores sought an injunction to enforce the arbitration awards. Following the conclusion of a hearing the district judge ordered that the arbitration awards be enforced and that the defendants be preliminarily enjoined from engaging in, inducing or in any way encouraging any work stoppage in connection with the loading or unloading of grain destined for the Soviet Union under U.S. Export License. Thus the order went beyond the terms of the awards made by Arbitrators Caraway and Maxwell.

The Jacksonville Bulk Terminals (JBT) suit arises out of the same international events. Members of Local 1408, ILA, are employed by JBT which maintains a bulk marine shipping terminal in the Port of Jacksonville, Florida. JBT is a party to the collective bargaining agreement between the Jacksonville Maritime Association and Locals 1408, 1408-A, and 1593 of the ILA.

JBT is engaged in the loading of superphosphoric acid (SPA) onto ships destined for the Soviet Union from the Port of Jacksonville. SPA was not included in the Presidential embargo of January 4.

On January 15, 1980, a Norwegian vessel entered the Jacksonville port to take on SPA for transport to the Soviet Union. Pursuant to the national ILA resolution, the members of Local 1408 refused to handle the cargo. At no time did Local 1408 refuse to handle any other cargo.

The collective bargaining agreement between JBT and Local 1408 contains a no-strike clause[2] and an arbitra-

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[2] The clause reads:

> During the term of this agreement the employer agrees that there shall be no lockout of the members of the Union, and

tion clause.[3] JBT sought to compel arbitration with the union. Pending arbitration it sought a temporary restraining order and preliminary injunction to halt the boycott. The district court, denying the union the opportunity to express what the judge termed its "legitimate outrage in this singular manner," ordered the union to process its grievance in accordance with the contractual grievance procedure and enjoined it from refusing to work aboard the three ships then in port.

Shortly after the injunction was issued, the JULIA L was loaded with grain and departed from New Orleans. The three Norwegian vessels were loaded with SPA and left Jacksonville. Thereafter, effective February 4, 1980, the International Trade Administration of the Department of Commerce changed the regulations governing the export of certain commodities, including phosphoric acid, and now requires the issuance of validated licenses before such commodities can be exported. Simultaneously, new licensing was suspended. 45 Fed. Reg. 8293 (Feb. 7, 1980). On February 25, the President extended the trade

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the Union agrees that there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interruption or stoppage, total or partial, of the employer's operation for any cause whatsoever.

[3] Paragraph 15B of the Agreement provides, "Matters under dispute which cannot be promptly settled between the Local and an individual Employer" shall be referred to arbitration.

Paragraph 15F of the contract provides:

The Union agrees that this Agreement is intended to cover all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this Agreement. Anything not contained in this Agreement shall not be construed as being part of this Agreement.

embargo with the Soviet Union to include SPA and other phosphates.

The unions, appealing both injunctions, contend that the cases are, nonetheless, not moot, that the first amendment protects each union and its members from an injunction requiring them to abandon an effort to express their political views and that each injunction was improperly granted on other grounds. Some issues are common to both appeals; some are different in each, but all are governed by the same principles. We, therefore, consolidated the appeals and will consider them in this one opinion.

II.

The constitution limits the jurisdiction of federal courts to "cases or controversies." Art. III, § 2, United States Constitution. If, as a result of events that have occurred after a suit has started, even while it is on appeal, the litigants no longer have an actual dispute, the case is said to be moot, to present a question of academic interest rather than of decision of the rights of the parties. A case thus mooted is not a controversy within the meaning of the Constitution. *Liner* v. *Jafco, Inc.*, 375 U.S. 301, 84 S.Ct. 391, 11 L.Ed.2d 347 (1964); Note, The Mootness Doctrine in the Supreme Court, 88 Harv. L. Rev. 373, 378 (1974). While the record is not entirely clear, it appears that some licensed grain is still being exported to the Soviet Union and that, therefore, to the extent the injunction issued by the district court for the Eastern District of Louisiana prohibits interference with loading that grain, the real controversy continues.[4] While the record is unclear concerning SPA,

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[4] In *Philadelphia Marine Trade Ass'n* v. *ILA, Local 1291*, 365 F.2d 295 (3rd Cir. 1966), *rev'd on other grounds*, 389 U.S. 64, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967), the case was held not moot where the arbitration award extended to future violations of the collective bargaining agreement and the district court retained jurisdiction

statements made at oral argument indicate that some is still being loaded for shipment to the Soviet Union. We need not remand, however, for a factual determination in this respect because we find jurisdiction on another basis.

In some instances, despite the fact that the immediate dispute has been resolved, it may still be appropriate for a court to consider the litigation. *See* G. Gunther, Cases and Materials on Constitutional Law 1573 (9th ed. 1975). If it is probable that similar cases will arise in the same fashion in the future and the underlying dispute will, as a result of similar occurrences, evade judicial review, there is a sufficient case to satisfy the constitutional requirement. *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310 (1911); *Roe* v. *Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). However, if the case is not presented as a class action, mootness can be avoided only if the challenged action is in duration too short to be litigated fully prior to its cessation or expiration and there is a reasonable expectation that the same complaining party would again be subjected to the same action. *Weinstein* v. *Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 349, 46 L.Ed.2d 350 (1975); *Sosna* v. *Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975).

The loading or unloading of a vessel requires but a day or two. If an injunction is issued against loading or unloading, unless this court grants a stay order, the vessel will have departed before an appellate court can review the injunction. Thus, the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration.

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to enforce the award against any subsequent violation after the current work stoppage ceased. The award of Arbitrator McAulay in the NOSSA suit is similarly applicable to subsequent disputes.

Unlike the situation in *General Electric Co.* v. *Local Union 191*, 443 F.2d 608, 610 (5th Cir. 1971), *vacated and remanded*, 398 U.S. 436, 90 S.Ct. 1883, 26 L.Ed.2d 384 (1970), where we found "no possibility of a recurrence of strikes" and the contract had expired, in the instant case there is a real possibility of the recurrence of work stoppages absent judicial intervention. Therefore, the second part of the jurisdictional test is satisfied: there is a reasonable expectation that the same complaining party will be subjected to the same action again.

The policy of the ILA continues. The Soviet Union's troops remain in Afghanistan. Unless we review the injunctions now, the controversy is capable of repetition in a fashion that would again evade review.

III.

The first amendment is absolute in terms: Congress shall make no law abridging the freedom of speech. Its protection extends to labor union activities. *Thomas* v. *Collins*, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430 (1945); *Thornhill* v. *Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940). The first amendment shields not only verbal and written messages, purely communicative, but also conduct designed to express and convey ideas. *See, e.g.*, *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969); *See* Nimmer, The Meaning of Symbolic Speech Under the First Amendment, 21 U.C.L.A. L. Rev. 29 (1973). It prohibits not only statutory abridgment but all governmental action including judicial action that restrains free expression. *See New York Times Co.* v. *Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); *American Federation of Labor* v. *Swing*, 312 U.S. 321, 61 S.Ct. 568, 85 L.Ed. 855 (1941).

The Supreme Court has frequently distinguished between "pure speech" and what it has labelled "speech-

plus"—expressive conduct arousing action. *See, e.g., Cox* v. *Louisiana* (Cox II), 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed.2d 487 (1965); *Teamsters Local 695* v. *Vogt, Inc.*, 354 U.S. 284, 77 S.Ct. 1166, 1 L.Ed.2d 1347 (1957); *Bakery & Pastry Drivers Local 802* v. *Wohl*, 315 U.S. 769, 776-77, 62 S.Ct. 816, 819-20, 86 L.Ed. 1178 (1942).[8]

While "pure speech" is seldom subject to any governmental action, "speech-plus," the Supreme Court has held, is subject to governmental regulation, and even perhaps restraint, when the action is warranted by a compelling government interest. *United States* v. *O'Brien*, 391 U.S. 367, 376-77, 88 S.Ct. 1673, 1678-79, 20 L.Ed.2d 672 (1968); *Adderly* v. *Florida*, 385 U.S. 39, 48 n.7, 87 S.Ct. 242, 247 n.7, 17 L.Ed.2d 149 (1967); *Cox* v. *Louisiana* (Cox II), 379 U.S. 559, 563, 85 S.Ct. 476, 480, 13 L.Ed. 2d 487 (1965). *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 571-72, 62 S.Ct. 766, 768-69, 86 L.Ed. 1031 (1942) ("fighting words"); *Schenck* v. *United States*, 249 U.S. 47, 52, 39 S.Ct. 247, 249, 63 L.Ed. 470 (1919) ("clear and present danger that they will bring about the substantive evils that Congress has a right to prevent"); *Wood* v. *Georgia*, 370 U.S. 375, 383-85, 82 S.Ct. 1364, 1369-70, 8 L.Ed.2d 569 (1962); *Dennis* v. *United States*, 341 U.S. 494, 503-10, 71 S.Ct. 857, 864-68, 95 L.Ed. 1137 (1951).

Just as the states may regulate labor relations, at least in areas not preempted by federal action, and enjoin peaceful picketing aimed at preventing effectuation of the state's policy, *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490, 69 S.Ct. 684, 93 L.Ed. 834 (1949), the Congress may regulate labor relations affecting interstate commerce and the federal courts may implement congressional policy by enjoining action that obstructs

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[8] The distinction has been criticized as having "no real content" because all communication involves conduct. L. Tribe, American Constitutional Law 599 *et seq.* (1978).

it,[6] *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957). *See Retail Clerks, Local 1625* v. *Schermerhorn*, 375 U.S. 96, 84 S.Ct. 219, 11 L.Ed.2d 179 (1963); *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962); *Railway Employees' Department* v. *Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956). Thus, an injunction against picketing or threats in violation of the "secondary boycott" provisions of the Labor Management Relations Act, 29 U.S.C. § 158(b)(4), is not proscribed. *Electrical Workers, Local 501* v. *N.L.R.B.*, 341 U.S. 694, 705, 71 S.Ct. 954, 960, 95 L.Ed. 1299 (1951); *Burr* v. *N.L.R.B.*, 321 F.2d 612 (5th Cir. 1963); *N.L.R.B.* v. *Local Union No. 3, Electrical Workers*, 477 F.2d 260 (2d Cir. 1973), *cert. denied*, 414 U.S. 1065, 94 S.Ct. 572, 38 L.Ed.2d 470 (1973). We have, prior to the decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 96 S.Ct. 3141, 49 L.Ed.2d 1022 (1976), ordered arbitration of a labor dispute and enjoined a strike pending arbitration. *West Gulf Maritime Ass'n* v. *I.L.A.*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd* 531 F.2d 574 (5th Cir. 1976). *See also Hughes* v. *Superior Court*, 339 U.S. 460, 70 S.Ct. 718, 94 L.Ed. 985 (1950); *Colonial Sand & Stone Co.* v. *Geoghegan*, 367 F.Supp. 932 (S.D.N.Y. 1973).

The first amendment "does not protect behavior made unlawful by legitimate legislation or regulation, enacted for purposes unrelated to the suppression of free expression." *Bullock* v. *Mumford*, 509 F.2d 384, 387 (D.C. Cir. 1974); *American Radio Ass'n* v. *Mobile Steamship Ass'n*, 419 U.S. 215, 228-32, 95 S.Ct. 409, 417-419, 42 L.Ed.2d 399 (1974); *Teamsters Local 695* v. *Vogt, Inc.*, 354 U.S.

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[6] Because we are here discussing constitutional power, we do not pause to consider statutory restrictions on the judiciary such as those imposed by the Norris-LaGuardia Act, 29 U.S.C. § 104. We will, however, hereafter consider the effect of that statute on court action.

284, 77 S.Ct. 1166, 1 L.Ed.2d 1347 (1957); *Carpenters & Joiners Union Local 213* v. *Ritter's Cafe*, 315 U.S. 722, 62 S.Ct. 807, 86 L.Ed. 1143 (1942). The work stoppage occasioned only by words is not to be distinguished from one occasioned by a picket line.

The argument that the injunctions against the refusal to work ships is a "prior restraint" on speech does not withstand analysis. Neither President Gleason nor any other ILA officer or member is enjoined from speaking. They are enjoined simply from continuing a work stoppage already commenced in the NOSSA case and threatened in the JBT case.

The court's order prohibits only a concerted work stoppage, and cannot be construed as an edict requiring an individual to perform personal services. An employee remains free to quit his employment at any time. The argument that the district court injunction enforced a promise to render personal services has, therefore, been rejected on numerous occasions by the Supreme Court. *See, e.g., UAW Local 232* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 251, 69 S.Ct. 516, 520, 93 L.Ed. 651 (1949) *overruled on other grounds, Lodge 76, International Ass'n of Machinists* v. *Wisconsin Employment Relations Board*, 427 U.S. 132, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976). *See also N.L.R.B.* v. *Local 74, Carpenters & Joiners*, 181 F.2d 126, 132 (6th Cir. 1950), *aff'd*, 341 U.S. 707, 71 S.Ct. 966, 95 L.Ed. 1309 (1951); *N.L.R.B.* v. *National Maritime Union*, 175 F.2d 686, 692 (2d Cir. 1949), *cert. denied*, 338 U.S. 954, 70 S.Ct. 492, 94 L.Ed. 1348 (1950). We conclude that neither the first nor the thirteenth amendment was violated by either injunction.

IV.

In the absence of constitutional restraint, the propriety of issuance of an injunction must be evaluated in the light of conflicting national policies, expressed in stat-

utes: on the one hand, the federal statute forbidding the issuance of injunctions in labor disputes and, on the other, those enactments favoring the resolution of such differences by arbitration.

A.

The Norris-LaGuardia Act, 29 U.S.C. §§ 101-115, was adopted in 1932 to curb federal courts in their use of injunctions against strikes and other economic weapons in labor disputes.[7] Section 4(a) of the Act, 29 U.S.C. § 104(a) reads:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction *in any case involving or growing out of any labor dispute* to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment. (Emphasis added.)

Thus Norris-LaGuardia is limited to cases "involving or growing out of" a "labor dispute." Section 13(c) of the

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[7] *See* Note, *Buffalo Forge Co.* v. *United Steelworkers*: The Supreme Court Sanctions Sympathy Strikes, 25 Clev.St.L.Rev. 435 (1976). Congress intended to take the federal courts out of the "labor injunction business." *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365, 369, 80 S.Ct. 779, 783, 4 L.Ed.2d 797 (1960); S. Rep. No. 163, 72d Cong., 1st Sess 7-8 (1932); H.R. Rep. No. 669, 72d Cong., 1st Sess. 2-3 (1932); 75 Cong. Rec. 5464, 5467, 5478 (1932). *See* F. Frankfurter & N. Greene, The Labor Injunction 24-46, 131-33, 200-02 (1930). *See also* A. Cox, D. Bok, R. Gorman, Cases on Labor Law 60 (8th ed 1977); O. Fiss, Injunctions 580-612 (1972); Statutory History of the United States: Labor Organizations 161-247 (R. Koretz ed. 1970).

Act, 29 U.S.C. § 113(c), defines "labor dispute" as follows:

> (c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

A panel of this court in 1975 held that a strike to achieve a political goal is a labor dispute within the meaning of the Norris-LaGuardia Act. *United States Steel Corp.* v. *United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975), *rehearing denied*, 526 F.2d 376 (1976), *cert. denied*, 428 U.S. 910, 96 S.Ct. 3221, 49 L.Ed.2d 1217 (1976).[8] The strike was aimed "at the national policy of this country's permitting the importation of South African coal." 519 F.2d at 1247. The panel found that an injunction issued by the district court violated Section 9 of the Norris-LaGuardia Act, 29 U.S.C. § 109, which, like § 4 of the Act, applies only in cases "involving or growing out of a labor dispute."

That decision was rendered on September 24, 1975, after oral argument, and submission. Shortly thereafter, another panel of this court considered a similar problem and reached an apparently inconsistent decision. In *West Gulf Maritime Ass'n* v. *ILA*, 413 F.Supp. 372 (S.D. Tex. 1975), *aff'd summarily*, 531 F.2d 574 (5th Cir. 1976),

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[8] The Supreme Court in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 96 S.Ct. 3141, 49 L.Ed.2d 1022 (1976) cited this court's decision in *United States Steel Corp.* as "in accord" with the Second Circuit decision affirmed by the Supreme Court in *Buffalo Forge*. 428 U.S. at 404 n.9, 96 S.Ct. at 3146 n.9, 49 L.Ed.2d at 1028 n.9.

the union, in violation of a no-strike agreement, had refused to load grain on a ship bound for the Soviet Union until the president of ILA was satisfied that the interests of the American public were adequately protected. Noting that the underlying dispute involved a political issue, the district court found there was no labor dispute and held Section 4 of the Norris-LaGuardia Act inapplicable. *Accord, Harrington & Co.* v. *ILA, Local 1416*, 356 F.Supp 1079 (S.D. Fla. 1973); *Khedivial Line, SAE* v. *Seafarers' International Union*, 278 F.2d 49 (2nd Cir. 1960). *Cf. NLRB* v. *International Longshoremen's Ass'n (Ocean Shipping)*, 332 F.2d 992 (4th Cir. 1964) (politically-motivated boycott held not a labor dispute within the meaning of the Labor Management Relations Act). The decision was affirmed summarily without an opinion and, so far as we can determine, without the members of the panel of this court being aware of the *United States Steel Corp.* decision. The possibility of such a regrettable occurrence appears to lurk continually in the proceedings of a multi-panel court for it is difficult to devise a process that will expose the similarity of issues in pending cases before decisions are published.

We find it difficult satisfactorily to reconcile these decisions. To the extent that they are inconsistent, we consider the rationale of *United States Steel Corp.* to be more persuasive. Moreover, it was decided after oral argument and by a written opinion while there was but a summary affirmance in *West Gulf Maritime.* Adhering to the earlier and more fully expressed opinion, we find that a strike called to further the political goals of the union does "involve or grow out of any labor dispute" for purposes of the Norris-LaGuardia Act.[9]

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[9] Whether a dispute involving a political question is "in commerce" within the meaning of the provisions of the Labor Management Relations Act (LMRA) regulating secondary boycotts is a different question, which we consider separately in the cases of

B.

A few years after the adoption of the Norris-LaGuardia Act Congress fostered collective bargaining by enacting the Wagner Act, the National Labor Relations Act of 1935. In 1947, it modified national labor policy by enacting the Taft-Hartley Act, the Labor Management Relations Act of 1947.

National policy, embodied in the National Labor Relations Act, as thus amended June 23, 1947, 29 U.S.C. § 173(d), favors the orderly resolution of labor-management grievances through arbitration. *United Steelworkers* v. *American Manufacturing Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960).

Moreover, the Labor Management Relations Act (LMRA) authorizes federal courts to entertain suits to enforce collective bargaining agreements. Section 301(a), 29 U.S.C. § 185(a). These provisions, in combination,

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Baldovin v. *International Longshoremen's Ass'n*, —— F.2d —— (5 Cir.) and *Mack* v. *International Longshoremen's Ass'n*, —— F.2d —— (5 Cir.) decided by us today. Although the LMRA reaches activities "in commerce" to the full extent of the Congressional power under the commerce clause, *NLRB* v. *Reliance Fuel Oil Corp.*, 371 U.S. 224, 83 S.Ct. 312, 9 L.Ed.2d 279 (1963), a labor dispute does not automatically come within the jurisdictional confines of the Act. *Windward Shipping (London) Ltd.* v. *American Radio Ass'n*, 415 U.S. 104, 94 S.Ct. 959, 39 L.Ed.2d 195 (1974). Whether an activity constitutes a labor dispute is an inquiry separate and distinct from the effect of that activity on commerce. "The National Labor Relations Act does not extend to all industries and all employees. It is only applicable to those employments in which strikes and labor disputes would affect interstate commerce . . . ." *Alabama State Federation of Labor, Local No. 103* v. *McAdory*, 325 U.S. 450, 464, 65 S.Ct. 1384, 1391, 89 L.Ed. 1725 (1945).

created the basis for suits to enforce arbitration agreements by injunction. However, Congress did not repeal the Norris-LaGuardia Act ban on injunctions, considering and rejecting a proposal to do so.[10]

The anti-injunction policy of the Norris-LaGuardia Act is not an impediment to specific performance of the promise to arbitrate. The Supreme Court has, since *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957), consistently upheld the validity of orders compelling the arbitration of a labor dispute. *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 94 S.Ct. 629, 38 L.Ed.2d 583 (1974); *Nolde Brothers, Inc.* v. *Local No. 358, Bakery Workers Union*, 430 U.S. 243, 97 S.Ct. 1067, 51 L.Ed.2d 300 (1977). However, these cases do not involve the power of a court to enjoin a strike pending the arbitration of the dispute.

Moreover, because of the national labor policy in support of agreed upon dispute-settlement procedures, an injunction may issue to prevent the violation of an arbitration award, once rendered. Such an injunction is deemed authorized by the LMRA of 1947, limiting the reach of the Norris-LaGuardia anti-injunction policy. *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960); *International Ass'n of Machinists, District 776* v. *Texas Steel Co.*, 538 F.2d 1116 (5th Cir. 1976); *Pacific Mari-*

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[10] "In the course of enacting the Taft-Hartley Act, Congress rejected the proposal that the Norris-LaGuardia Act's prohibition against labor-dispute injunctions be lifted to the extent necessary to make injunctive remedies available in federal courts for the purpose of enforcing collective-bargaining agreements." *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 409, 96 S.Ct. 3141, 3148, 49 L.Ed.2d 1022 (1976). The relevant legislative history is discussed in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 205-09, 82 S.Ct. 1328, 1334-36, 8 L.Ed.2d 440 (1962).

time Ass'n v. *International Longshoremen's and Warehousemen's Union*, 517 F.2d 1158 (9th Cir. 1975); *New Orleans Steamship Ass'n* v. *General Longshoreworkers Local 1418*, 389 F.2d 369 (5th Cir. 1968), *cert. denied*, 393 U.S. 828, 89 S.Ct. 92, 21 L.Ed.2d 99 (1968); *Philadelphia Marine Trade Ass'n* v. *International Longshoremen's Ass'n, Local 1291*, 365 F.2d 295 (3rd Cir. 1966), *rev'd on other grounds*, 389 U.S. 64, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967); *Pacific Maritime Ass'n* v. *International Longshoremen's and Warehousemen's Union*, 304 F.Supp. 1315 (N.D.Calif.1969), *aff'd on other grounds*, 454 F.2d 262 (9th Cir. 1971). As the Supreme Court pointed out in *Buffalo Forge*, "were the issue arbitrated and the strike found illegal, the relevant federal statutes as construed in our cases would permit an injunction to enforce the arbitral decision." 428 U.S. at 406, 96 S.Ct. at 3147, 49 L.Ed.2d 1022.

The latent conflict between the LMRA and Norris-LaGuardia when an injunction against a strike is sought pending arbitration was considered in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 82 S.Ct. 1328, 8 L.Ed.2d 440 (1965), reconsidered in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970) and again reviewed in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 96 S.Ct. 3141, 49 L.Ed.2d 1022.[11] *See also* our review in *Jacksonville Maritime Ass'n* v. *International Longshoremen's Ass'n*, 571 F.2d 319 (5th Cir. 1978).

In *Boys Markets* the Supreme Court favored accommodation of the seemingly absolute terms of the Norris-LaGuardia Act and the policies of LMRA. Overruling its prior decision in *Sinclair Refining*, the court held that a federal court has power to enjoin a strike "over a griev-

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[11] *See* Cohen, Strikes and Injunctions: The Buffalo Forge Case, 30 N.Y.U. Conf. Lab. 171 (1977).

ance which both parties are contractually bound to arbitrate" if the employer is "ordered to arbitrate, as a condition of his obtaining [the] injunction." 398 U.S. at 255, 90 S.Ct. at 1594, 26 L.Ed.2d at 212. *See Jacksonville Maritime Ass'n* v. *International Longshoremen's Ass'n*, 571 F.2d 319 (5th Cir. 1978). *Cf. Sea-Land Service, Inc.* v. *International Longshoremen's Ass'n*, 625 F.2d 38, (5th Cir. 1980) (*Boys Markets* injunction may not be issued pending ongoing NLRB proceedings).

The Supreme Court refined the criteria for issuance of a *Boys Markets* injunction in *Buffalo Forge*, which involved a sympathy strike by a union that had agreed to a no-strike clause in a collective bargaining agreement. The company sought to enjoin the strike pending arbitration of the issue whether the strike violated the contract. The Supreme Court's 5-4 decision noted: "The Union has gone on strike not by reason of any dispute it or any of its members has with the employer, but in support of other local unions . . . ." 428 U.S. at 404-05, 96 S.Ct. at 3146, 49 L.Ed.2d at 1029. "Whether the sympathy strike the Union called violated the no-strike clause, and the appropriate remedies if it did, are subject to the agreed-upon dispute-settlement procedures of the contracts and are ultimately issues for the arbitrator." 428 U.S. at 405, 96 S.Ct. at 3146, 49 L.Ed.2d at 1029. However, even though the strike might violate the no-strike provision of the contract and its validity be the subject of arbitration, the strike could not be enjoined if it "was not *over* any dispute between the Union and the employer" that was subject to the arbitration provisions of the contract, 428 U.S. at 407, 96 S.Ct. at 3148.[12]

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[12] We had previously reached this same conclusion in *Amstar Corp.* v. *Meat Cutters*, 468 F.2d 1372 (5th Cir. 1972). *See Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. at 404 n.9, 96 S.Ct. at 3146 n.9.

Thus the crucial distinction is whether arbitration would resolve the dispute that led to the strike. Reviewing this line of Supreme Court decisions in *Jacksonville Maritime*, we upheld the issuance of an anti-strike injunction where "(1) the strike [breaches] a no-strike obligation under an effective collective bargaining agreement; (2) the strike [is] over an arbitrable grievance; *and* (3) both parties [are] contractually bound to arbitrate the underlying grievance caused by the strike." 571 F.2d at 323. These continue to be the prerequisites.

V.

In one of the consolidated appeals presently before this court, the *Jacksonville Bulk Terminals* case, the district court issued a prearbitration injunction restraining the union's work stoppage as to shipments of cargo to Russia aboard three vessels. Since we have already determined that the strikes in the instant cases, aimed at effectuating the political goals of the union, "involve or grow out of" a labor dispute, the injunction is invalid under Section 4 of Norris-LaGuardia unless it complies with the limited *Boys Markets* exception.

The injunction fails to meet the second requisite for a *Boys Markets* injunction as articulated by this Court in *Jacksonville Maritime*: no arbiter could resolve the grievance between the ILA and the Soviet Union. The union's grievance is not, as asserted by JBT, a complaint against JBT doing business with the Soviets. It is a complaint against the actions of the U.S.S.R. itself. The union seeks to deny the Soviets the benefit of the labor of its members so long as that nation is engaged in what the union considers aggression. Unfortunately, no arbitrator can tell the Soviets to withdraw from Afghanistan.

The Florida district court's judgment ordered the union to process any grievance over the shipment of cargo

to the Soviet Union aboard the three vessels in accordance with the procedure contained in the arbitration clause of the contract. But an order to compel arbitration may issue only if the dispute is arbitrable. Arbitrability is a question for the court to pass on in the first instance. *Mobile Oil Corp.* v. *Local 8-766, Oil, Chemical & Atomic Workers*, 600 F.2d 322, 324 (1st Cir. 1979); *Local Union No. 787; Electrical, Radio & Machine Workers* v. *Collins Radio Co.*, 317 F.2d 214, 216 (5th Cir. 1963). While the question whether the strike itself violated the parties' agreement is arbitrable, the underlying dispute between the ILA and the Soviet Union is not. To the extent that the Florida judgment compels the parties to submit the former question to arbitration, it is affirmed; to the extent it demands arbitration of the underlying dispute it goes beyond the court's power and is vacated.

The Union suggests that the New Orleans arbitrators went beyond their authority. Judicial deference to arbitration does not, of course, grant carte blanche aproval to any decision an arbitrator might make. *Machinists, Local 2003* v. *Hayes Corp.*, 296 F.2d 238, 243 (5th Cir. 1961), *aff'd on rehearing*, 316 F.2d 90 (5th Cir. 1963). The arbitrator's authority is circumscribed by the arbitration agreement, and he can bind the parties only on issues that they have agreed to submit to him. Whether an arbitrator has exceeded these bounds is an issue for judicial resolution. *Torrington Co.* v. *Metal Products Workers, Local 1645*, 362 F.2d 677, 680 (2nd Cir. 1966). The award is not, however, tested by judicial review of the legal principles applicable or the application of some sort of clearly erroneous test to the findings of the fact. The award need only draw its essence from the collective bargaining agreement. *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S.Ct. 1358, 1361, 4 L.Ed.2d 1424, 1428; *Safeway Stores* v. *American Bakery & Confectionary Workers*, 390 F.2d 79, 81 (5th Cir. 1968). We find each

of the arbitrator's awards here sufficiently nurtured by the no-strike clause of the contract and it does not sap their essence that the underlying dispute was not itself arbitrable. A union may agree not to strike over any issue, arbitrable or not. Whether in this case it did was a question for the arbiters.

Insofar as the decision of the district court for the Eastern District of Louisiana granted an injunction to prevent violation of the arbitration awards actually made, it is affirmed. However, arbitrators' decisions can only be enforced as written. "It is the arbitrator's construction which was bargained for; . . . the courts have no business overruling him because their interpretation of the contract is different from his." *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. at 599, 80 S.Ct. at 1362, 4 L.Ed.2d at 1429. *International Ass'n of Machinists* v. *Modern Air Transport, Inc.*, 495 F.2d 1241 (5th Cir. 1974); *San Antonio Newspaper Guild Local No. 25* v. *San Antonio Light Division*, 481 F.2d 821 (5th Cir. 1973).

Arbitration is a dispute-settlement procedure that is a part of the collective bargaining process. *Piggly Wiggly Operators' Warehouses, Inc.* v. *Piggly Wiggly Operators' Warehouse Independent Truck Drivers Union, Local No. 1*, 611 F.2d 580 (5th Cir. 1980). It is not a judicial forum. Whether there is a "law of the contract" between the parties once an arbitrator decides an issue and what effect, if any, is to be given precedent are not primarily, if at all, questions for judicial resolution.

The Louisiana district court's judgment does more than merely enforce the awards as written: it applies the arbitration award of arbitrators Caraway and Maxwell, carefully limited by them to one vessel, to other vessels that may hereafter arrive at the Port of New Orleans. In this regard it enjoins future strikes over underlying grievances not subject to arbitration and makes the arbitrator's award

pecedential.[13] Whether the award can be given an effect akin to res judicata or stare decisis with regard to future disputes that may arise between the parties, neither the district court nor this court should decide. If the parties do not agree, that issue itself is a proper subject for arbitration.

Accordingly, the New Orleans injunction must be limited to restraint of strikes that violate the specific arbitration awards as rendered. This, of course, means that the injunction against strikes by ILA locals 1683 and 1802 will be broader than the injunction against strikes by ILA locals 1418, 1419 and 1497. That is not a consequence of judicial inconsistency but of the operation of the three separate dispute settlement procedures in three separate contracts.

VI.

Subject to the limitations of the constitution, national labor policy is to be made by the Congress. It is for the legislature to determine whether boycotts or strikes are to be sanctioned, encouraged or prohibited, as well as whether injunctions are, or are not, an acceptable means of intervention. We conclude that the controlling statutes permit the use of an injunction to prohibit strikes in violation of an arbitrator's award, but disallow injunctive relief prior to arbitration to prevent work stoppages that result from grievances not resoluble by arbitration even though such work stoppages may violate a no-strike clause.

Accordingly, the preliminary injunction ordered by the judgment of the Middle District of Florida is VACATED.

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[13] The district court cited *Pacific Maritime Ass'n* v. *International Longshoremen's and Warehousemen's Union*, 454 F.2d 262 (9th Cir. 1971) to support its decision to extend the awards of arbitrators Maxwell and Caraway to include all grain which has been issued a United States export license. That decision affirmed the issuance of an injunction against subsequent violations of an arbitrator's award. It did not involve an expansion by the court of the arbitrator's award, and it is, therefore, inapposite.

Insofar as that judgment ordered the parties to submit to arbitration the question whether the work stopage violated the no-strike clause, it is AFFIRMED. The case is REMANDED for further proceedings consistent with this opinion.

The judgment of the Eastern District of Louisiana is AFFIRMED insofar as it issues a preliminary injunction against ILA Locals 1683 and 1802 in accordance with the award of Arbitrator McAulay. The preliminary injunction against ILA Locals 1418, 1419 and 1497 based on the awards of Arbitrators Caraway and Maxwell, is VACATED and the case is REMANDED for further proceedings consistent with this opinion.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 80-81-Civ-J-B

JACKSONVILLE BULK TERMINALS, INC., HOOKER CHEMICAL CORPORATION, and OCCIDENTAL PETROLEUM COMPANY,
Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LOCAL UNION 1408, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LANDON WILLIAMS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; MELVIN ANDREWS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; OLIVER COLLINS, INDIVIDUALLY AND AS TREASURER OF LOCAL 1408; PAUL FIELDS, INDIVIDUALLY AND AS BUSINESS AGENT OF LOCAL 1408; JOHN DOE AND ALL OTHER MEMBERS OF LOCAL 1408 OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, OR OF ANY OTHER LABOR ORGANIZATION ACTING IN CONCERT WITH THE NAMED DEFENDANTS,
Defendants.

PRELIMINARY INJUNCTION

For the reasons stated in the Opinion entered herein on this date, it is

ADJUDGED:

1. The defendants and their officers, agents, servants, representatives, members and employees and all those

individuals or entities in concert or participation with them who receive actual notice of this order are enjoined and restrained from calling, instigating, directing, encouraging, threatening, causing, assisting, or participating in any strike, slowdown, work stoppage, refusal to work as assigned, or any other interruption of JBT's terimnal operation relating to M/V BOW SEA, M/V BOW ROGN, and M/V BOW LIND because of any question, dispute, difference, complaint, or grievance concerning the shipment of cargo from JBT's Jacksonville terminal to the Soviet Union.

2. The defendants, their officers, agents, servants, representatives, members and employees and all those in concert or participation with them are enjoined and restrained from any action eliciting the support of other persons, including, without limitation, members and officials of the Masters, Mates and Pilots Association, in refusing to service the M/V BOW SEA, M/V BOW ROGN, and M/V BOW LIND carrying cargo to or from the Soviet Union or in any other way refusing to perform traditional and usual work performed by those persons related to the M/V BOW, SEA, M/V BOW ROGN, and M/V BOW LIND.

3. JBT and the defendants shall process any grievance(s) over the shipment of cargo to and from the Soviet Union on the M/V BOW SEA, M/V BOW ROGN, and M/V BOW LIND in accordance with the contractual grievance procedure contained in § 15(B) of the collective bargaining agreement.

4. This order shall become effective upon JBT's filing with the Clerk of this Court a good and sufficient bond in the penal amount of $2,500.00.

5. Should the President's order restricting trade with the Soviet Union be broadened to include superphosphoric acid, the Court will entertain a motion by any party to

dissolve this order immediately. Once a motion is filed, no party will be held in violation of this order until further order of the Court.

ORDERED at Jacksonville, Florida, this 1 day of February, 1980, at 9:00 A.M.

/s/ Susan H. Black
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 80-81-Civ-J-B

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION, and
OCCIDENTAL PETROLEUM COMPANY,
Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LOCAL UNION 1408, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LANDON WILLIAMS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; MELVIN ANDREWS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; OLIVER COLLINS, INDIVIDUALLY AND AS TREASURER OF LOCAL 1408; PAUL FIELDS, INDIVIDUALLY AND AS BUSINESS AGENT OF LOCAL 1408; JOHN DOE AND ALL OTHER MEMBERS OF LOCAL 1408 OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, OR OF ANY OTHER LABOR ORGANIZATION ACTING IN CONCERT WITH THE NAMED DEFENDANTS,
Defendants.

OPINION

Plaintiffs, Jacksonville Bulk Terminals, Inc. ("JBT"), filed this action under § 301(a) of the Labor Management Relations Act, 29 U.S.C. 185(a), for Breach of a collective bargaining agreement, requesting a temporary restraining order and a preliminary and permanent injunction. Defendants agreed to waive the five days notice required by Local Rule 4.06(a), Rules of the United States District Court for the Middle District of

Florida, and a hearing was held on plaintiff's request for a preliminary injunction on January 31, 1980. By oral motion at this hearing, Hooker Chemical Corporation ("Hooker") and Occidental Petroleum Company ("Occidental") were added as additional plaintiffs. JBT, a subsidiary of Oxy Chemical Corp. ("OXY"), maintains a bulk marine shipping terminal at the Port of Jacksonville, Florida ("Jacksonville Terminal"), where it handles large amounts of superphosphoric acid ("SPA"). SPA, a phosphate-based chemical, is produced by Hooker Chemical Corporation ("Hooker"), the corporate parent of OXY, at Hooker's facility in White Springs, Florida. Seventy-five percent of the prosphate produced by Hooker at White Springs is shipped through JBT's Jacksonville Terminal to the Soviet Union pursuant to a twenty-year exchange agreement between the Soviet Union and plaintiff Occidental, Hooker's parent company.

Defendants include the International Longshoremen's Association ("ILA"), its local affiliate, Local 1408 ("Local"), and individual officers and members of the Local. At all pertinent times ILA and the Local have been the exclusive representatives of all longshoremen working at the Jacksonville Terminal. In October of 1977, ILA and the Local entered into a collective bargaining agreement ("agreement") with JBT. Paragraph 15(A) of this agreement provides,

> 15. (A) During the terms of this Agreement, the Employer agrees that there shall be no lockouts of the members of the Union, and Union agrees that there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interruption or stoppage, total or partial, of the Employer's operation for any cause whatsoever . . . .

Paragraph 15(B) of the agreement provides that "matters under dispute" which cannot be resolved by the parties shall be referred to arbitration.

On January 4, 1980, the President of the United States announced certain restrictions on trade with the Soviet Union. No restrictions were placed on the shipment of SPA. Subsequently, ILA adopted a resolution announcing its refusal to load or unload any cargo bound to or from the Soviet Union. Since January 15, 1980, four ships have arrived in Jacksonville to load SPA for the Soviet Union. These shipments represent approximately $42,000,000. in revenues to Hooker. The Local, adhering to the policy established by ILA, has refused to load these ships because they are bound for the Soviet Union. One ship, the M/V BOW SUN, is presently being loaded with other cargo and is no longer relevant to this action. Plaintiffs claim that the refusal to load the remaining three ships, the M/V BOW SEA, the M/V BOW ROGN, and the M/V BOW LIND, plus others which may arrive, is a violation of the agreement. They seek injunctive relief.

The initial question the Court must consider is the applicability of § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104(a).

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunctions in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> > (a) Ceasing or refusing to perform any work or to remain in any relation of employment.

By its terms this Act applies only to cases "involving or growing out of any *labor dispute.*" (emphasis added). Section 13(c) of the Act, 29 U.S.C. 113(c), defines "labor dispute."

> (c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the associaiton or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Under this definition Courts generally have held that strikes to effectuate the political goals of the union do not "involve or grow out of any labor dispute." The case of *West Gulf Maritime* v. *I.L.A.*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd*, 531 F.2d 574 (5th Cir. 1976), involved an almost identical question. In that case the union, in violation of a no strike agreement, had refused to load grain on a ship bound for the Soviet Union until the president of ILA was satisfied that the interests of the American public were adequately protected. Noting that the union was trying to argue a political issue, the court found there was no labor dispute and held § 4 of the Norris-LaGuardia Act inapplicable. *Accord*, *Harrington Co., Inc.* v. *I.L.A., Local 1416*, 356 F. Supp. 1079 (S.D. Fla. 1973); *Khedivial Line SAE* v. *Seafarer's Int. Union*, 278 F.2d 49 (2d Cir. 1960).

The underlying dispute in this case is clearly political. In fact, other than the work stoppage, there appears to be no dispute at all between plaintiffs and defendants. Defendants' underlying objections are not to the policies of their employer, but to the political policies of a foreign nation. Though both understandable and admirable, those objections do not involve or grow out of any labor dispute as that term is used in § 4 of the Norris-LaGuardia Act.

Therefore, the Court is not prohibited by the Norris-LaGuardia Act from granting the relief requested by plaintiffs.

After determining that the Norris-LaGuardia Act does not apply, the Court still must determine whether a preliminary injunction is appropriate under the traditional concepts of equity law. Thus the Court must evaluate (1) the likelihood of plaintiffs' success on the merits, (2) whether plaintiffs will suffer irreparable harm if the injunction does not issue, (3) the potential harm to defendants if the injunction is issued, and (4) the public interest.

(1) There is a substantial likelihood of plaintiffs' success on the merits. Defendants specifically agreed to forego the right to strike in return for a mandatory arbitration agreement. Such agreements are favored by federal labor policy. See 29 U.S.C. § 173(d); *Boys Market, Inc.* v. *Retail Clerks Union*, 398 U.S. 235, 26 L.Ed.2d 199, 90 S.Ct. 1583 (1973); *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 38 L.Ed.2d 583, 94 S.Ct. 629 (1974). There is a substantial likelihood that defendants' work stoppage will be found to be in violation of the agreement.

(2) Plaintiffs have also demonstrated that they will suffer irreparable harm if the injunction does not issue. In addition to the loss of revenues from sales and extra costs incurred, the strike has jeopardized the long-term exchange agreement between Occidental and the Soviet Union. Seventy-five percent of the phosphate produced at Hooker's White Springs facility and a substantial portion of JBT's operations are directed toward this contract. In addition, Occidental would lose the substantial supply of ammonia, ureau and potash it receives in return. Such a drastic reallocation of markets and suppliers would inevitably result in irreparable harm.

(3) On the other hand, defendant will suffer no harm if the injunction is issued. At most they will be denied the opportunity to express their legitimate outrage in this singular manner. They specifically agreed to forego the opportunity to use this means of expression. Defendants will be required only to submit their grievances to a neutral arbitrator as they previously have agreed.

(4) Perhaps the most important factor in this determination is the public interest. The Court is not unsympathetic with defendants' position. It recognizes they are motivated not by a desire for personal gain but by a desire to oppose the unlawful acts of aggression committed by the Soviet Union against a relatively defenseless nation. However, the United States government, though not a party to this action, has appeared and assured the Court that,

> There is no current prohibition against the export from the United States to the U.S.S.R. of superphosphoric acid under the export control laws and regulations. . . .[and that] [A]ppropriate governmental action has been taken and will be taken with respect to exports to the Soviet Union to protect the interests of the United States, and that private action by longshore workers to interfere with such exports are not warranted.

Under these circumstances, the Court must find that defendants, though well-intentioned, may not rely on the public interest to justify a breach of their collective bargaining agreement. However, the government's statement makes it clear that its position is currently under review and that review is "proceeding quickly." In view of the fluidity of the present situation, the Court will limit its order to those three ships presently in port.

In conclusion, the Court finds that plaintiffs have established the necessary facts to entitle it to a prelim-

inary injunction and that such an injunction, in this case, is not prohibited by the Norris-LaGuardia Act. Plaintiffs are also entitled to an order directing defendants to process their related grievances in accordance with the contractual grievance procedure. The Court realizes, as noted by Judge Cox in *West Gulf Maritime* v. *Intern, Longshoremen's Assn., supra* at 375, that it may appear inconsistent to order defendants to arbitrate their grievances while holding that there exists no labor dispute. However, as in *West Gulf Maritime*, this is an action for breach of contract, and the answer lies in the terms of the contract. Paragraph 15(B) of the agreement is not limited to labor disputes but states generally, "Matters under dispute which cannot be promptly settled . . ." shall be subject to the arbitration procedures. Therefore, though defendants' grievances do not constitute a "labor dispute" as that term is used in § 4 of the Norris-LaGuardia Act, they are a "matter under dispute" and are governed by paragraph 15(B) of the agreement.

Therefore, the Court will this day enter an order enjoining defendants from refusing to load the M/V BOW SEA, the M/V BOW ROGN, and the M/V BOW LIND because of any grievance concerning shipment of cargo to the Soviet Union and ordering defendants to process any grievance over the shipment of cargo to the Soviet Union in accordance with the contractual grievance procedure contained in paragraph 15(B) of the agreement.

ISSUED at Jacksonville, Florida, this 1 day of February, 1980.

/s/ Susan H. Black
United States District Judge

APPENDIX C

29 U.S.C. § 185

Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 152(9)

DEFINITIONS

When used in this subchapter

. . . .

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

Office-Supreme Court, U.S.
FILED
MAY 14 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1045

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION,
Petitioners,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DECEMBER 24, 1980
CERTIORARI GRANTED MARCH 30, 1981

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THE FOLLOWING OPINIONS AND ORDERS HAVE BEEN OMITTED IN PRINTING THIS APPENDIX BECAUSE THEY APPEAR ON THE FOLLOWING PAGES IN THE APPENDIX TO THE PRINTED PETITION FOR CERTIORARI:

A. Opinion of the United States Court of Appeals for the Fifth Circuit, September 25, 1980 .....1a (App.)

B. Order and Opinion of the United States District Court, Middle District of Florida, Jacksonville Division .....26a (App.)

I. RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

DATE	PROCEEDINGS
1980	
Jan. 28	Verified complaint for temporary restraining order, preliminary injunction, specific performance and damages filed.
Feb. 1	Preliminary injunction issued and opinion of Judge Black entered.
Feb. 7	Notice of Appeal filed by defendant.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DATE	PROCEEDINGS
1980	
Feb. 12	Appeal docketed.
Sept. 25	Judgment issued.
Oct. 28	Order denying motion to stay mandate pending petition for Writ of Certiorari issued.
Oct. 28	Mandate issued.

II. RELEVANT PLEADINGS AND EXHIBITS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 80-81-CIV-J-B

JACKSONVILLE BULK TERMINALS, INC.
Plaintiff,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LOCAL UNION 1408, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LANDON WILLIAMS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; MELVIN ANDREWS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; OLIVER COLLINS, INDIVIDUALLY AND AS TREASURER OF LOCAL 1408; PAUL FIELDS, INDIVIDUALLY AND AS BUSINESS AGENT OF LOCAL 1408; JOHN DOE AND ALL OTHER MEMBERS OF LOCAL 1408 OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, OR OF ANY OTHER LABOR ORGANIZATION ACTING IN CONCERT WITH THE NAMED DEFENDANTS,
Defendants.

VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, SPECIFIC PERFORMANCE AND DAMAGES

JACKSONVILLE BULK TERMINALS, INC. ("JBT"), by its undersigned attorneys, sues INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LOCAL UNION 1408, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LANDON WILLIAMS, INDIVIDUAL-

LY AND AS VICE-PRESIDENT OF LOCAL 1408; MELVIN ANDREWS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; OLIVER COLLINS, INDIVIDUALLY AND AS TREASURER OF LOCAL 1408; PAUL FIELDS, INDIVIDUALLY AND AS BUSINESS AGENT OF LOCAL 1408; JOHN DOE AND ALL OTHER MEMBERS OF LOCAL 1408 OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION OR ANY OTHER LABOR ORGANIZATION ACTING IN CONCERT WITH THE NAMED DEFENDANTS and alleges:

COUNT I

1. This action arises under section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185. Jurisdiction is conferred upon this Court by the provisions of that section. Venue in this Court is appropriate under 28 U.S.C. § 1391(b).

2. JBT is a Florida corporation with its principal place of business at Jacksonville, Florida. JBT is a wholly-owned subsidiary of Oxy Chemical Corporation, which is a subsidiary of Hooker Chemical Corporation ("Hooker"). Ownership of each of these corporations is ultimately vested in Occidental Petroleum Corporation.

3. JBT maintains a bulk marine shipping terminal ("the Jacksonville terminal") at the Port of Jacksonville, Florida. At the Jacksonville terminal, cargo of various kinds is loaded onto and unloaded from ocean-going vessels. JBT is in an industry affecting commerce within the meaning of section 2(6) of the National Labor Relations Act, as amended, 29 U.S.C. § 152(6), and section 301 of the Labor Management Relations Act.

4. The INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ("the International") is a labor organization under Chapter 447, Florida Statutes (1979). LOCAL

1408 of the International ("Local 1408") is also a labor organization under Chapter 447, Florida Statutes (1979), and is an affiliate of the International. Local 1408 maintains a hiring hall ("the hiring hall") serving the Port of Jacksonville. The International and Local 1408 are engaged, through their officers and agents, in representing longshoremen who perform work at JBT's terminal pursuant to JBT's requests for labor. The longshoremen are working in an industry affecting commerce within the meaning of section 301 of the Labor Management Relations Act. Local 1408 and the International have been the exclusive representatives of all longshoremen performing work at JBT's terminal facilities at all pertinent times.

5. The individual defendants are officers and/or agents of Local 1408. They are also representatives of a class consisting of the longshoremen who perform work at JBT's terminal.

6. JBT's Jacksonville terminal includes buildings, offices, storage tanks, terminal facilities, docks, machinery, and equipment with a current market value in excess of $25,000,000. JBT employs approximately twenty-three employees at the Jacksonville terminal. Further, JBT utilizes members of Local 1408 in its daily business of loading and unloading cargo on ships and in receiving cargo to be loaded on ships. Through the hiring hall and pursuant to pertinent collective bargaining agreements, Local 1408 refers members to JBT to perform services related to JBT's daily business. JBT uses only employees represented by Local 1408 to perform longshore and related work.

7. Local 1408 and the International, acting through their officers, agents, and designated members, are the exclusive collective bargaining agents for the longshoremen described in Paragraphs 4 and 6 and possess the requisite legal authority to enter into binding collective

bargaining agreements with JBT on behalf of JBT's employees.

8. On or about October 1, 1977, JBT, as a member of the Jacksonville Maritime Association, Inc., entered into a collective bargaining agreement ("the collective bargaining agreement") with Local 1408 and the International covering longshoring and related activities at the Port of Jacksonville, Florida. A copy of the collective bargaining agreement is attached to this complaint as Exhibit A. JBT is one of twelve signatories to the collective bargaining agreement. The collective bargaining agreement remains in full force and effect until September 30, 1980.

9. Among the cargo handled at JBT's terminal facilities are large amounts of superphosphoric acid ("SPA"), a phosphate-based chemical used as a component of fertilizer. SPA is produced at Hooker's facility in White Springs, Florida, at a plant employing in excess of 2,000 persons. It is shipped to the Union of Soviet Socialist Republics ("Soviet Union") pursuant to an agreement ("the exchange agreement") between Occidental Petroleum Corporation and the Soviet Union. The exchange agreement provides for Hooker's purchase of ammonia, urea, and potash from the Soviet Union over the twenty-year term of the exchange agreement.

10. Seventy-five percent (75%) of the phosphate produced by Hooker at White Springs, Florida, is shipped in the form of SPA to the Soviet Union through JBT's Jacksonville terminal. Shipments to the Soviet Union account for nearly eighty percent of the revenue derived from Hooker's White Springs plant. Shipments to the Soviet Union under the exchange agreement have totalled approximately 10,000 metric tons in 1978, 480,000 metric tons in 1979. They are projected to total 1,000,000 metric tons in 1980 and in succeeding years.

11. On or about October 4, 1979, JBT entered into another agreement ("the supplemental agreement") with Local 1408 and the International. The supplemental agreement governs longshoring and related activities necessary for SPA shipments to the Soviet Union under the exchange agreement. A copy of the supplemental agreement is attached to this complaint as Exhibit B. The supplemental agreement remains in full force and effect for the duration of the exchange agreement. Among other things, the supplemental agreement provides that the collective bargaining agreement applies in circumstances not expressly covered in the supplemental agreement.

12. The collective bargaining agreement contains a mandatory grievance and arbitration procedure ("the arbitration clause"), which governs all disputes between JBT, Local 1408, and the International and which states:

> [Par. 15(B)]. Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall, no later than 48 hours after such discussions, be referred in writing covering the entire grievance to a Port Grievance Committee . . . .
>
> . . . .
>
> A majority decision of this Committee shall be final and binding on both parties and on all Employers signing this Agreement. In the event the Committee is unable to reach a majority decision within 72 hours after meeting to discuss the case, it shall employ a professional arbitrator. . . .

The supplemental agreement makes no change in the arbitration clause.

13. The collective bargaining agreement also contains a pervasive and explicit no-strike clause ("the no-strike clause"), which states:

> [Rule 15(A)(1) During the term of this Agreement, the Employer agrees that there shall be no lockouts of the members of the Union and the Union agrees there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interference or stoppage, total or partial, of the Employer's operation for any cause whatsoever; such causes including but not limited to, unfair labor practices by the Employer or violation of this Agreement.

The supplemental agreement makes no change in the no-strike clause.

14. Local 1408, the International, and the individual defendants are under a duty to abide by the no-strike clause.

15. On January 4, 1980, President Carter announced restrictions on certain types of trade with the Soviet Union in retaliation for the Soviet Union's unlawful acts of aggression against Afghanistan. SPA was not included in the Presidential embargo.

16. The International subsequently adopted a resolution confirming its refusal to load or unload any cargo shipped to or from the Soviet Union. Local 1408 has complied with this resolution, as described further in this complaint.

17. On January 15, 1980, the M/V BOW SEA, a Norwegian flag vessel approached the Port of Jacksonville, bound for JBT's terminal to load 26,000 metric tons of SPA for shipment to the Soviet Union. JBT was informed by Local 1408 and the International, through their officers and agents, that the longshoremen at JBT would refuse to load the M/V BOW SEA because the cargo was bound for the Soviet Union.

18. Through the month of January 1980, four other Norwegian flag carriers—the M/V BOW ROGN, the M/V BOW SUN, the M/V BOW LIND, and the M/V BOW SKY—are scheduled to arrive (or have arrived) at JBT's Jacksonville terminal for the purpose of receiving SPA bound for the Soviet Union.

19. SPA shipments to the Soviet Union scheduled for January, 1980, represent approximately forty-two million dollars ($42,000,000) in revenues to Hooker.

20. Beginning on January 15, 1980, and continuing until the present, Local 1408 and the International, acting through their respective officers and agents and the individual defendants, acting on their own behalf, have breached the collective bargaining agreement and the supplemental agreement by collectively, concertedly, and individually engaging in, participating in, sanctioning, and authorizing a planned strike, work stoppage, and concerted refusal to supply labor at JBT's terminal as a result of which there has been a complete cessation of JBT's terminal operations with respect to the loading of SPA for shipment to the Soviet Union.

21. The conduct referred to in Paragraph 20 has included, without limitation, direct notification to JBT's management by officers and agents of local 1408 and the International that all longshoremen will refuse to handle any of Hooker's SPA destined for the Soviet Union. Also, officers and agents of Local 1408 and the International have notified JBT that individuals belonging to the Masters, Mates and Pilots Association (MMP), a labor organization under Chapter 447, Florida Statutes (1979), and an affiliate of the International, will refuse to provide pilot and tugboat services to any vessels receiving Hooker's SPA for shipment to the Soviet Union, including the Norwegian flag vessels the M/V Bow Sea and the M/V Bow Rogn.

22. JBT expects the defendants to continue the conduct referred to in Paragraphs 20 and 21 with respect to additional shipments of SPA to the Soviet Union through JBT's terminal, including, without limitation, the scheduled shipment of cargo on the Norwegian flag vessels the M/V Bow Sun, the M/V Bow Lind, and the M/V Bow Sky, all of which will arrive (or have arrived) at JBT's terminal during January, 1980.

23. On January 10, 1980, JBT conferred with officers and agents of Local 1408 and the International regarding the imminent work stoppage at JBT's terminal and received no indications then or since that the unlawful work stoppage will cease. Since January 15, 1980, JBT and its affiliates have made numerous contacts with officials of the executive branch of the United States government in an effort to resolve the work stoppage without judicial intervention. Members of the White House staff commenced discussions with the International concerning recission of the boycott. To date, those discussions have not resulted in any relief of promise of relief for JBT from the boycott.

24. The collective bargaining agreement expressly refers disputes concerning work methods or operations to the mandatory grievance and arbitration provision. The collective bargaining agreement, states:

> [Par. 13(D)(5)] Where hardship is claimed by Union because of unreasonable or burdensome conditions or where work methods or operations materially change in the future, the problem shall first be discussed between the local and Management involved. In the event an agreement cannot be reached, either party may refer the dispute to a Joint Negotiating Committee and, if the matter cannot be resolved by that Committee, either party may then refer the question to an arbitrator in accordance with the procedure set forth in Clause 15(B).

25. The collective bargaining agreement reserves to JBT complete prerogative in the management of the business and the direction of the work force, except where expressly limited. The collective bargaining agreement states:

> [Par. 13(F)] The Management of the Employer's business and direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically provided in the Agreement, all of the rights, powers and authority Employer had prior to signing of this Agreement are retained by Employer.

26. The work stoppage at JBT's terminal directly contravenes Rule 13(D)(5) and Rule 13(F) of collective bargaining agreement. Both Local 1408 and the International have expressly and absolutely relinquished the right to engage in a work stoppage of any kind for any reason, including any dispute over the assignment of work, operations, or the direction of the work force.

27. The dispute causing the work stoppage at JBT's Jacksonville terminal is a "matter under dispute" within the meaning of the arbitration clause and, therefore, the dispute is subject to mandatory arbitration. The only remedy available to Local 1408 and the International in this dispute is arbitration.

28. JBT in good faith has performed all conditions precedent to the institution of this action and is prepared to submit to arbitration in accordance with the arbitration clause.

29. JBT's business, including loading Hooker SPA bound for the Soviet Union, is competitive with other companies. Valuable good will and the unique trading agreement between the Soviet Union and Hooker, in part, occurred because of JBT's and Hooker's prompt, efficient, and satisfactory performance of its obligations.

31. As a direct result of the defendants' unlawful work stoppage JBT will suffer permanent and irreparable harm and injury including, without limitation, massive loss of revenues, forced plant shutdown, substantial layoffs. In addition, JBT will suffer irreparably (1) from the inability to ship SPA and receive ammonia, urea and potash in exchange and (2) from permanent loss of the exchange agreement with the Soviet Union unless a Temporary Restraining Order is issued by this Court restraining and enjoining the defendants from continuing their unlawful conduct.

32. JBT has no adequate remedy in a civil action for damages because the delay incident to obtaining relief would result in serious and irreparable damage to JBT.

33. If the unlawful work stoppage continues, JBT, as a proximate result, will suffer immeasurably and drastically. If the work stoppage is enjoined, the defendants will incur no injury.

34. On January 16 and 17, and 28, 1980, JBT endeavored by telegram and by other means to notify the officers and/or agents of Local 1408 and the International that this Complaint would be filed in this Court seeking injunctive relief and damages. A copy of the telegram is attached to this complaint as Exhibit C. Further efforts by JBT to contact the defendants and the attorneys are detailed in the affidavit of Mary L. Applegate, an attorney for JBT, attached as Exhibit D.

WHEREFORE, JBT requests:

1. An order requiring that JBT and the defendants proceed in accordance with the arbitration clause with respect to any grievance(s) relating to the shipment of Hooker's cargo to the Soviet Union through the JBT's terminal.

2. An order enjoining Local 1408 and the International and their officers, agents, representatives, and all

JBT's employees represented by Local 1408 and the International from refusing to load or perform other work, traditional and usual in their past relationship with JBT, with respect to any cargo produced by Hooker and bound for the Soviet Union, including, but not limited to, cargo for the Norwegian flag vessels the M/V Bow Sea, the M/V Bow Rogn, the M/V Bow Sun, the M/V Bow Lind and the M/V Bow Sky.

3. An order (1) requiring Local 1408 and the International and their officers, agents and representatives to undertake affirmative acts to ensure that none of their members refuses to perform any services involved in mooring, preparing for, or loading cargo on any vessel at JBT's terminal and bound for the Soviet Union, and (2) providing penalties, including, without limitation, fines of individual union members, removal of union officers, and imposition of temporary trusteeship upon Local 1408.

4. An order enjoining and restraining Local 1408 and the International and their officers, agents and representatives from any act which aids, assists or encourages the refusal to service vessels or load or unload cargo aboard vessels bound for the Soviet Union.

5. An order enjoining and restraining Local 1408 and the International and their officers, agents, representatives, members, and persons acting in concert with them and all JBT's employees represented by them from causing, sanctioning, assisting, or participating in any strike, slowdown, work stoppage, or similar concerted activity during the pendency of this action because of any issue within the allegations of this complaint.

6. An order enjoining and restraining Local 1408 and the International and their officers, agents and representatives from engaging in action designed to elicit or from eliciting the support of other persons, including

members and officials of the MMP, to either (1) refuse to load or unload Hooker's cargo or vessels bound for the Soviet Union, or (2) in any other way refuse to perform traditional and usual work performed by those persons.

7. That after a hearing, the court grant JBT's application for a preliminary injunction.

8. That after a trial, the court grant a permanent injunction.

9. That JBT have other general relief.

COUNT II

35. JBT reiterates Paragraphs 1-34.

36. The breaches of the collective bargaining agreement and the supplemental agreement and the other unlawful acts alleged in this complaint proximately caused and continue to cause great losses to JBT, in excess of Five Hundred Thousand Dollars per day.

WHEREFORE, JBT demands judgment against the defendants for the sum of Five Hundred Thousand Dollars ($500,000) for each and every day the unlawful acts continue and such other damages as JBT suffers, with both interest to the date of the judgment and the costs of this proceeding.

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VERIFICATION

State of Florida
County of Duval

I, James J. Galvin, Chairman of the Board of Jacksonville Bulk Terminals, Inc. and Occidental Chemical Company, have read the foregoing complaint, and verify and affirm that the statements of fact are true and correct.

JAMES J. GALVIN
Chairman, Jacksonville Bulk
Terminals, Inc. and
Occidental Chemical Company

Signed and sworn to before me this ——— day of ———, 1980

Notary Public

(My commission expires: ———)

[Notice of Intent to Sue Omitted in Printing]

[Affidavits in Support of Complaint Omitted in Printing]

EXHIBIT A

PORT OF
JACKSONVILLE, FLORIDA

LONGSHORE AGREEMENTS

Between the
Jacksonville Maritime Association, Inc.
and the
International Longshoremen's Association

I.L.A. LOCAL 1408

I.L.A. LOCAL 1408-A

I.L.A. LOCAL 1593

Effective October 1, 1977

LONGSHORE AGREEMENTS

Between the

Jacksonville Maritime Association, Inc.

and the

International Longshoremen's Association

I.L.A. LOCAL 1408

Covering Longshore Work

I.L.A. LOCAL 1408-A

Covering Waterfront Warehouse Work

I.L.A. LOCAL 1593

Covering Clerks and Checkers Work

Effective October 1, 1977

Ending September 30, 1980

LONGSHOREMEN'S AGREEMENT

Between the

Jacksonville Maritime Association, Inc.

and the

International Longshoremen's Association

LOCAL NO. 1408

1. This agreement was made and entered into on the 16th day of November 1977, between the Jacksonville Maritime Association representing its direct employer members, hereinafter known as the party of the first part and the South Atlantic & Gulf Coast District of the International Longshoremen's Association representing its subordinate Local No. 1408 hereinafter known as the party of the second part.

2. The agreement shall be in effect until midnight September 30, 1980, and covers all longshore work as designated herein at the Port of Jacksonville.

3. (A) (1) Wages per hour, according to job classification, shall be as follows:

Effective 6/1/77		Effective 10/1/78		Effective 10/1/79	
Straight	Overtime	Straight	Overtime	Straight	Overtime
(a) Gang Foremen:					
$9.30	$13.95	$10.10	$15.15	$10.90	$16.35
(b) Bulldozer Operators, Shipboard Crane Operators other than Revolving Crane, Mobile Cranes on Ship or Dock, Semi-Tractor Drivers:					
$9.05	$13.575	$ 9.85	$14.775	$10.65	$15.975
(c) Winchmen, Hatchtenders, Tractor, Payloader, Transporter, Lift Truck and Other Power-Driven Machin-					

ery Operators; Fixed Revolving Deck Crane Operators:

$8.85	$13.275	$ 9.65	$14.475	$10.45	$15.675

(d) Gangmen (Holdmen, Hookmen and Dockmen) and all Other Labor Performing Longshore Work:

$8.80	$13.20	$ 9.60	$14.40	$10.40	$15.60

Where present practice provides higher job classification differentials above base gangmen pay, the present differential shall be continued.

3. (B) (1) (A) The Employers agree to contribute into the fund for pension, welfare, vacation and holiday benefits for all hours which men receive pay the following amounts per hour effective as indicated:

Effective 10-1-77	$3.515
Effective 10-1-78	$3.765
Effective 10-1-79	$4.115

3. (B) (1) (B) CONTAINER ROYALTY—

The Employers agree to pay into a fund for supplemental cash benefits the amounts set forth below as a royalty when loading or discharging containers which are twenty (20) feet or more in length and which have not been stuffed or will not be stripped by personnel employed under this agreement:

(a) On conventional ships, thirty-five cents (35c) per gross ton;

(b) On partially automated ships (conventional ships converted for handling vans and containers) where not more than two hatches have been converted for the handling of containers, seventy cents (70c) per gross ton;

(c) On partially automated ships (conventional ships converted for handling vans and containers) where

not more than forty percent (40%) of the ship's bale cube has been fitted for containers, seventy cents (70c) per gross ton;

(d) On ships were more than two hatches have been converted or fitted for the handling of containers, or where more than forty per cent (40%) of the ship's bale cube has been fitted for containers, one dollar ($1.00) per gross ton;

The above funds shall continue to be administered by a Board of six (6) Trustees, three of which will be appointed by each party, to serve until they resign or are replaced by the party they represent. The parties signatory to this Agreement further agree to be bound by the terms and conditions of the Trust Agreement as amended or extended, and by the administrative regulations of the Trustees in connection with the establishment and administration of the funds, the methods and times of making payments to the fund, and the means of accounting therefor.

A second container royalty of 35c, 70c, 70c and $1.00 per gross ton dependent on which of conditions (a), (b), (c) or (d) above is applicable is to be paid to a District Fund less up to twenty-five per cent (25%) of local additional collections for collection expense with an annual maximum of $75,000.00 to be used for supplementing funds where receipts decline due to reduced hours paid to the men. This District Fund is to be administered by the Negotiating Committee as Trustees, and disposition of the money to fringe benefit funds is to be directed by a majority vote of the Negotiating Committee. Should the Committee be unable to agree, the dispute shall be resolved as set forth in Clause 15.

A third container royalty, equal to the first container royalty, listed above shall be paid into the same fund as the first container royalty, and administered by the same

Board of six Trustees as previously detailed. This third container royalty, however, must be used only and exclusively for cash disbursements to the men. Terms and conditions of the disbursement to be determined by the Trustees.

3. (B) (2) Each employer will submit to the Local Union and the Fund Trustees quarterly reports of hours worked, individually by men, for all work covered under this Agreement. The Trustees shall institute whatever auditing procedures they deem necessary to verify these reports.

3. (B) (3)

(a) This "Guaranteed Annual Income Plan" is established to assist those men who have steadily worked as Longshoremen, Clerks, or Checkers in the Ports of Morehead City, Wilmington, Southport, Georgetown, Charleston, Port Royal, Savannah, Brunswick, St. Mary's Fernandina, Jacksonville, Tampa and Port Manatee, over the years, and who may in the future find their work opportunities reduced to the point an income supplement is needed. It is not a plan for supplementary income to men already receiving adequate work, and in viewing its provisions the parties to the agreement ask all concerned to interpret its provisions only to the benefit of the men who are denied work opportunity through no fault of their own, and who remain ready and willing to work at all times.

(b) To implement the Plan there shall be established a Trust Agreement and a Board of Ten Trustees, five of which shall be appointed by each party, to serve until they resign or are replaced by the Party they represent. The

Trustees shall have the authority to take all necessary action to implement and administer the Plan in all its details. The Parties signatory to this Agreement further agree to be bound by the terms and conditions of the Trust Agreement as amended or extended, and by the administrative regulations of the Trustees in connection with the establishment or administration of the Fund, the methods and times of making payments to the Fund, and the means of accounting therefor. It is further agreed that the contributions, while to be collected and paid over by the Contracting Stevedore, are the sole ressponsibility of the party ordering the Contracting Stevedore to perform the work (Private or Governmental) and the Contracting Stevedore is obligated to obtain signed agreement from the Party ordering the work that he will be bound by this contract. Should the Party ordering the Contracting Stevedore to perform the work fail to pay the established contributions, and not withstanding the provisions of Clause 15(A), the men shall not be required to work for the defaulting Party ordering work by any Contracting Stevedore until the debt is paid in full.

(c) It is the intent of the Plan to insure that all men who have been employed for 700 or more hours under the Longshore or Clerks and Checkers Agreement in 1975-76 shall be assured of an income of 1250 hours times the straight time pay rate in the labor contract years 1977-78, 1978-79, and 1979-90, and where supplement pay is required W.V.P. assessments shall also be paid to these funds. When a man 65 or older becomes eligible for a

pension he must decide within 6 months to either retire and receive a lump-sum settlement from the G.A.I. fund of $1,250.00 or to continue working with no further G.A.I. coverage. Should he subsequently wish to retire under the pension plan, he could do so but would not receive the lump-sum settlement. The Trustees shall establish procedures for crediting hours to men who fail to qualify due to losing hours during the above periods because of injury at work, illness qualifying for benefits under the Welfare Plan, service as Union officials, or Military Service, if previously employed under the agreements. To finance the Plan the Parties ordering the Contracting Stevedore to work cargo Vessels shall contribute, commencing 6-1-72, to the Fund, a tonnage assessment which the Trustees establish on their best estimate of the amount required for the year as related to the anticipated volume of cargo to be handled in these ports. This assessment will be identical in amount at each port.

This Assessment, when paid, is the total liability of the Parties. The Assessment shall be recalculated by the Trustees as required, but any change in assessments shall not be retroactive.

For all time lost by persons included under the G.A.I. Plan, due to failure to work because of an I.L.A. strike and/or work stoppage or work stoppage resulting from strike or picketing activities of other persons or organizations not a party to this Agreement, the equivalent daily guaranty per work day 8:00 A.M.-5:00 P.M.-Monday through Friday will be deducted,

per each individual so involved, from any G.A.I. Plan guaranteed hours which are due or may become due.

There shall be no hours guaranteed to any individual, qualified and registered under the G.A.I. Plan, from the time that a port becomes inoperable until operation resumes, in the event that work cannot be offered nor performed because of War, Natural Disasters such as hurricanes, earthquakes, etc., or disasters such as the "Texas City" disaster or ship disasters in stream which would render a port inoperable.

(d) Each port in the South Atlantic shall institute and maintain joint Union-Management hiring procedures, subject to the approval of the District Trustees, including arrangement for the dispatching of men and gangs in such fashion as to assure a minimum liability to the Fund. The expenses of such personnel are to be borne by the Fund. Personnel entitled to G.A.I. will receive preference in hiring over non-G.A.I. covered personnel.

(e) The effective date for commencing the necessary hiring procedure and providing for possible supplemental benefits shall be October 1, 1972. Payments of supplemental wages and W.P.V. assessments shall be made on a monthly basis. Payment of the first 25 hours per month is to be withheld until 125 hours have been accumulated in reserve to insure minimum unnecessary advance payments. This reserve shall be accounted for to the employee in the final month of the contract year. Over-payments to employees may be deducted as necessary from the employee's future salary.

(f) In establishing procedures at each port the following provisions shall be included, with details to be determined by the Trustees.

(1) Employees shall be subject to multiple debiting in event of any of the following:

1. Failure to be available and accept work for 8:00 A.M. or 1:00 P.M. starts on weekdays when any non-G.A.I. covered personnel are employed.

2. Failure to report to work after accepting employment.

3. Leaving a job (unless injured).

4. Failure to return after a break, such as a meal hour when so ordered.

(2) Personnel shall lose all status and right to a Guaranteed Annual Income under the following conditions:

1. If they take steady employment requiring their presence between 8:00 A.M. and 5:00 P.M. any day of the week Monday through Friday.

2. If they fraudulently qualify for or claim supplemental wages by such means as having other personnel check them in, check others in, etc.

(3) When a man accumulates any combinations of 3 multiple debits he becomes ineligible for G.A.I. benefits for the 12 calendar months next following the date the third debit is applied.

(g) Should any provision of the "Guaranteed Annual Income Plan" be in violation of Federal or

State law, or should the Internal Revenue Service rule that assessments do not constitute a deductible business expense, the Plan shall be modified to enable the Plan to be in accord with existing laws.

3. (B) (4) In the event the I.L.A. shall consider supplying labor to an employer not a party to this Agreement at conditions which would depart from the provisions of this contract, the I.L.A. shall first give advance notice of such intent to the employers parties to this Agreement. Further, that such conditions for the particular work to be performed for an employer not bound by the provisions of this Agreement shall also be made applicable to the employer parties to this Agreement for the same type of work. The Employer likewise agrees to give the I.L.A. advance notice of any potential new business proposed to them which would or could result in a departure from this Agreement.

4. (A) The basic working day shall consist of 8 hours and the basic work week shall consist of 40 hours. Men shall work any night in the week, or on Saturdays, Sundays or holidays when required (except as provided in Clause 7, for work on New Year's Day, Independence Day, Labor Day and Christmas Day). Except for holidays specified in Clause 7, straight-time rate shall be paid for any work performed from 8:00 A.M. to 12:00 Noon and from 1:00 P.M. to 5:00 P.M. Monday through Friday, inclusive. Work at all other times, including specified holidays will be paid for at overtime rates, except as provided in Clause 7 for work on New Year's Day, Independence Day, Labor Day and Christmas Day and as provided in Clause 11 for work during meal hours.

4. (B) The work week will begin at 8:00 A.M. on Monday and will end at 8:00 A.M. on the following Monday. A day is defined as the 24-hour period commencing at 12:01 A.M. and ending at 12:00 Midnight.

5. (A) (1) A differential of 20 cents per hour in straight time and 30 cents per hour in overtime will be added to the rates specified in Clause 3(A) when the following commodities are handled:

Asbestos Fibre
Bone Meal
Bones in Bulk
Calcium Nitrate (Not Calcium Ammonium Nitrate)
Carbon Black
Caustic Soda
Cement in Bags or Bulk
Chloride of Lime
Coal
Coke
Copper Sulphate in Bags
Creosoted Materials
Crude Iodine
Cyanamide
Feather Meal
Fish Meal and Fish Scrap
Grain in Bulk and Dunnaging Over Grain
Green Salted Hides
Guano, Bird and Whale
Insecticides, including but not limited to D.D.T., cotton Dust or Toxaphene, Packaged in Paper Bags or Paper Drums
Magnesite
Meat Meal and Meat Scrap
Methylparathion
Paris Green
Peat Coke
Peroxide
Phthalic Anhydride
Powdered Arsenic
Phosphorous, Yellow
Salt Cake
Soda Ash

Sulphur and Dunnaging Over Sulphur
Tankage
Tecmangam
Tetra Tetra Ethyl Lead
Tin Scraps in Bales
Treated Lumber Products (Not Creosoted) When Loaded at Cresote Plant

5. (A) (2) A differential of 50 cents per hours in straight time and 75 cents per hour in overtime will be added to the rates specified in Clause 3(A) when the following commodities are handled:

Castor Meal Expeller
Castor Pumace
Bulk Tuna

5. (A) (2) A differential of 50 cents per hour in Clauses 5(A) (1) and 5(A) (2) are handled, all men in the gang including Gang Foreman, Winchman, Hatchtenders, Holdmen, Hookmen, Dockmen and Equipment Operators servicing the hatch will receive the applicable differential specified. Furthermore, whenever the gang is employed solely on one or more of the commodities listed above in Clauses 5(A) (1) and 5(A) (2), the men shall be paid the applicable differential for any time they may be engaged in rigging, opening or closing the hatch.

5. (B) (1) A differential of 20 cents per hour in straight time and 30 cents per hour in overtime will be added to the rates specified in Clause 3(A) for work performed in refrigerator compartments, refrigerator holds, refrigerator containers, refrigerator trucks or refrigerator cars whenever cargo is being handled that has been or will be carried at temperatures below 32 degrees Fahrenheit. When handling refrigerated cargo in conjunction with ice, the same differential will apply while handling such cargo and while handling the ice.

The differentials will be paid to all men working in the gang.

5. (B) (2) Gangs ordered for work on refrigerated cargo will be notified in advance in order that they may secure sufficient clothing. In the event men are not so notified prior to reporting for work that they will be handling cargo that has been or will be carried below 32 degrees Fahrenheit, they shall not be required to handle such cargo.

5. (C) (1) All personnel assigned to ship loading or discharging explosives or ammonium nitrate of a type requiring a U.S. Coast Guard Permit handled over or at exposure facilities, will be paid double the straight-time or overtime rate (whichever is applicable) as specified in Clause 3(A). Small-arms ammunition and firecrackers shall not be construed as explosives.

5. (C) (2) When men at other than explosive facilities such as Sunny Point or St. Mary's are working a vessel which contains explosives, other than commodities such as small-arms ammunition or firecrackers, all men, including dockmen, working the vessel will be paid at double the straight time or overtime rate (whichever is applicable) as specified in Clause 3(A).

5. (D) A differential of 30 cents per hour straight time and 45 cents per hour overtime will be added to the rates specified in Clause 3(A) for men working in water. This applies to washing down holds but not to items covered by Clause 6.

5. (E) A differential of 20 cents per hour in straight time and 30 cents per hour in overtime will be added to the rates specified in Clause 3(A) for Winchmen and Hatchtenders employed at hatches where cargo is being handled over exposed deck loads of creosoted materials.

5. (F) A differential of 50 cents per hour in straight time and 75 cents per hour in overtime will be added to the rates specified in Clause 3(A) for men actually working in the holds where equipment powered with internal combustion engines is in use. The provisions of this clause are waived when adequate blowers are in use. Adequate blowers shall meet the requirements of Paragraph 1504.93 of the Federal Safety and Health Regulations for Longshoring.

5. (G) None of the differentials provided for above shall be paid unless the men are so employed for fifteen minutes or more of continuous work.

6. For handling cargo damaged by fire or water or oil, where such damage causes unusual distress or obnoxious conditions, or where such damage results in cargo being in unnatural form to the extent of causing unusual distress or obnoxious conditions, double the straight-time or overtime rate specified in Clause 3(A) shall be paid to all men in the gang. For handling cargo where obnoxious odors are present and these obnoxious odors are not inherent in the type of cargo, double the straight-time or overtime rates specified in Clause 3(A) shall be paid to all men in the gang. Damaged cargo rates shall not be paid when sound cargo is handled from such compartments when the obnoxious conditions no longer prevail. Damaged cargo rates shall not be paid for handling wet cargo if the cargo has dried out sufficiently so that no unusual distress is caused and no obnoxious conditions prevail.

7. (A) The following holidays shall be observed:

January 1 ..... New Year's Day
January 15 ..... Martin Luther King's Birthday
February 12 ..... Abraham Lincoln's Birthday

February,
3rd Monday ..... George Washington's Birthday

February ..... Gasparilla Day (at Tampa only) In lieu of Washington's Birthday

Good Friday ..... Good Friday

May, last Monday .... National Memorial Day

July 4 ..... Independence Day

September,
1st Monday ..... Labor Day

October,
2nd Monday ..... Columbus Day

November 11 ..... Armistice Day

National
Election Day ..... One Annually

November,
4th Thursday ..... Thanksgiving Day

December 24 ..... Christmas Eve

December 25 ..... Christmas Day

December 31 ..... New Year's Eve

When any of these holidays fall on Sunday, the following Monday shall be observed to the extent of paying overtime rates and applying the 8-hour minimum period. No work will be performed on New Year's Day, Independence Day, Labor Day and Christmas Day, nor before 7:00 A.M. on the days following these holidays, nor before 7:00 A.M. on the days following these holidays, nor after 3:00 P.M. on Christmas Eve or New Year's Eve, except on ships which can be finished by 5:00 P.M. and except in case of fire or where property is in danger. On Christmas Eve or New Year's Eve men working will be guaranteed six hours overtime pay unless they actually work after 3:00 P.M. to complete a vessel in which case they will be paid 8 hours overtime.

7. (B) When vessels are worked because of fire or where property is in danger on any of the four "no work" holidays, double the straight-time rates as specified in Clause 3(A) will be paid. Where such work is under the conditions specified in Clause 6, double the overtime rates as specified in Clause 3(A) will be paid.

7. (C) On Election Day men must be released no later than 3:00 P.M. unless they start at 1:00 P.M. so they will have adequate time to vote.

8. (A) Regular starting time shall be 8:00 A.M., 1:00 P.M. and 7:00 P.M.; but there shall be no 1:00 P.M. start on Sundays or Holidays. On vessels which will be worked around the clock, gangs may be ordered for a 7:00 A.M. start on the second and subsequent days. Tankers, Bulk Phosphate ships at the elevator, and vessels in distress may start any time between 7:00 A.M. and 7:00 P.M., but on all starts after 7:00 P.M. men shall be paid from 7:00 P.M. Without regard to the above starting times men may be ordered for shifting ships, handling lines and cleaning holds; and extra men may be added to gangs already working.

8. (B) (1) All gangs for 7:00 A.M. through 1:00 P.M. starts must be ordered by 5:00 P.M., the previous day. Gangs for 7:00 P.M. starts must be ordered by 1:00 P.M. the same day. In the event weather or mechanical failure after 7:00 P.M. make it impossible for night gangs to finish a ship scheduled to complete before 8:00 A.M. the night gangs may be released and ordered back from shipside for a subsequent daytime start for work on that ship only, and the Union is to be notified as soon as the hall opens. Gangs ordered for 7:00 A.M. through 8:00 A.M. starts may be cancelled or modified by 5:00 P.M. the previous day. Gangs ordered for 1:00 P.M. starts may be cancelled or modified no later than 7:00 A.M. Gangs ordered for 7:00 P.M. starts may be cancelled no later than 4:00 P.M. but no reduction in the

number of gangs so ordered for a particular ship may be made.

8. (B) (2) Notwithstanding the provisions of 8(B) (1) gangs for work at night on Sundays and Holidays and for work at 8:00 A.M. or 1:00 P.M. on days following Sundays or Holidays shall be ordered by 5:00 P.M. on Saturday or the day preceding the Holiday. In the event the vessel will not arrive at the dock, night gangs may be cancelled or modified at 6:00 P.M. on Sunday or Holidays and day gangs at 7:00 A.M. Sunday, Monday or the day following the Holiday.

8. (C) Provided full gangs remain subject to the call of their employer, men ordered to work in gangs shall be paid a minimum of 8 hours time at the applicable straight time or overtime rates. In the event men are ordered for 7:00 A.M. they shall be paid one hour overtime from 7:00 A.M. to 8:00 A.M. and 8 hours from 8:00 A.M. Men in gangs ordered back for work after a meal hour shall be paid a minimum of 4 hours after such meal hour with running time for work over 4 hours. For the purpose of applying these minimums, the gang is to be considered a unit, and separate minimums are not to be applied to replacements starting later than the gang.

8. (D) Extra men added to gangs and men ordered for shifting ships, cleaning, loading stores and other miscellaneous work not involving the loading or discharging of cargo shall be paid a minimum of 4 hours time; and men ordered for handling lines shall be paid a minimum of 4 hours time at the applicable straighttime or overtime rates, subject to the provisions of Clause 8(E), provided they remain subject to the call of their Employer during that time.

8. (E) Men ordered to work for 7:00 A.M. or 8:00 A.M. starts may be cancelled or modified no later than

one hour before the start when it appears there shall be weather conditions that will prevent commencement of work as planned. If gangs are ordered for a new starting time for that day, such order shall be a firm and non-cancellable order. In the event the employer cancels 7:00 A.M. or 8:00 A.M. gangs one hour before the start due to weather conditions the gangs are to receive 4 hours call time at the applicable rate.

8. (F) Weather conditions are defined as including in addition to weather which prevents the working of cargo, weather within the channel at any point between the Sea Buoy and the pier which prevents the docking or shifting of vessels in time to start working as intended, but do not apply to vessels which have not reached the sea buoy in time to arrive at the dock for the intended starting time.

8. (G) The phrase "MEN ORDERED" as used herein is understood to apply only to new orders. It is not considered a new order when employment is interrupted solely due to meal periods, the Savannah pay day hour, or where men are shifted between job classifications or job locations by an employer. In the event men are not kept on the payroll but are released by an employer and ordered back for a subsequent starting time, it is considered a new order.

8. (H) Any work remaining to be done at 7:00 A.M. after gangs have worked through the night from 7:00 P.M. the previous evening shall normally be done by fresh gangs called out to start work at 7:00 A.M. as replacements for the night gangs. However, the night gangs shall continue to work beyond 7:00 A.M. whenever:

(a) Qualified fresh gangs are not available, or

(b) The work remaining to be done at 7:00 A.M. is less than two hours, or

(c) In the event rain or mechanical failure during the night prevents a vessel that would have completed with the night gangs from finishing the Union agrees to furnish emergency gangs if the Employer places the order at or before 7:00 A.M.

9. Port Limits, for the purpose of this contract, are defined as the boundaries of limits extending from the St. Johns River jetties along both banks of the river to the Shands Bridge crossing at Green Cove Springs and shall include all areas within the boundary limits of Duval County, Florida. But transportation to Blount Island terminals shall be provided when required.

10. Men shall be paid on a 30-minute basis and when they work 5 minutes or more of any 30-minute period they shall be paid for the full 30 minutes.

11. (A) (1) The following meal hours are to be observed:

Breakfast .....6:00 A.M. to 7:00 A.M.

Mid-Day Dinner .....12:00 Noon to 1:00 P.M.

Supper .....6:00 P.M. to 7:00 P.M.

Midnight Lunch .....12:00 Midnight to 1:00 A.M.

11. (A) (2) On vessels working nothing but bulk cargo when night men are not to work beyond 7:00 A.M. or when day men are not to work beyond 7:00 P.M. the Breakfast or Supper hour will not apply.

11. (B) (1) All meal hours when worked shall be paid for at double the overtime rates specified in Clause 3 (A) except for the Mid-day Dinner hours on Mondays through Fridays, holidays excepted; and for such Mid-Day Dinner hours double the straight-time rates specified in Clause 3(A) shall be paid. Meal-hour pay is to be continued until men are released or meal hour is given.

11. (B) (2) Notwithstanding previous clauses in this Agreement the following provisions for men handling lines will apply:

(a) Line handlers may be ordered for starts on any day of the year, at any hour of the day or night provided they receive a minimum notice of 4 hours.

(b) When line handling is required for docking, undocking or shifting of ships on any of the 4 "NO WORK HOLIDAYS" specifically New Year's Day, Independence Day, Labor Day and Christmas Day, double the straight-time rate will apply.

(c) Men ordered to handle lines shall be paid a minimum of 4 hours time at the applicable rate as specified in Clause 3(A) with running time thereafter, but no man may be required to handle lines more than twice during his 4 hour guarantee. A minimum of 4 men shall be used for tieing up vessels and 2 men for letting go the lines.

(d) Men engaged in the handling of lines during any of meal hours specified in Clause 11(A) shall be paid at overtime rates specified in Clause 3(A) for that hour. It is agreed that men may not be removed from cargo gangs during meal periods to handle lines when the gang is to resume cargo work after the meal period.

11. (C) Employees will make arrangements to furnish drinking water in a sanitary manner to the men on the ship and on the dock. Ice water and sanitary drinking cups will be supplied by the employer. A Waterboy will be furnished at the prevailing rate as specified in Clause 3(A) when 25 or more men, including dock-

men, are employed in the loading or unloading of a vessel or on more than one vessel when located in adjacent berths when worked by the same company. It is understood and agreed the man so employed shall be classified and designated as a Waterboy whose primary duty shall be to provide drinking water and cups as required above. Though the Waterboy may perform other incidental duties, such duties shall not be allowed to interfere with his primary duty. Water containers to be periodically steam-cleaned. The designated Waterboy must present a clean and healthy appearance at all times and he must possess a health card.

11. (D) When gangs are to work after 7:00 P.M. they must be notified by 3:00 P.M. and such notification constitutes a firm order. In the event weather or mechanical failure occurs after 3:00 P.M. delaying the finish and the men do not wish to remain after 7:00 P.M. the Union must dispatch new gangs for a 7:00 P.M. start if notified prior to 6:00 P.M.

12. (A) Payroll practices shall continue as per past procedures unless changed by mutual agreement of both parties.

12. (B) (1) Commencing on October 1, 1968, the Employer agrees to deduct from the wages of the Employees working under this Agreement National and District Union fees for each hour paid and local Union Fees, provided, however, that there be first presented to the Employer an authorization in the form set forth below:

CHECK-OFF AUTHORIZATION

To: (Employers) of Jacksonville Maritime Association and any other Employer with I.L.A. Contracts.

I hereby assign to the International Longshoremen's Association, AFL-CIO, and hereby direct my Employer to deduct from the wages received by me by

reason of my employment under the collective bargaining agreements with the ILA and its subordinate local No. 1408, 1408-A and 1597 as Service fees the sum of 1 per cent per straight time base rate hour National and District Service fees for each hour paid to me and 5 per cent of my gross pay as local service fees, and to pay this sum directly to the ILA and the local. This assignment shall remain in effect during the term of the present collective bargaining agreement unless revoked by written notice to the Employer, which notice is effective as to work performed for such Employer after receipt of said notice.

Date	Signature
Social Security Number	Witness

12. (B) (2) The Employer agrees to make monthly remittances of the amounts deducted from Employee's wages no later than the third Wednesday of each month for the preceding month with that portion representing the National and District Union fees to be sent to International ILA Headquarters in New York and the balance of the Union fees sent to the office of Local 1408. Should an Employee revoke the authorization, the Employer further agrees to immediately notify Local 1408. Reasonable administrative expense of the Check-Off may be borne by the ILA and the amount deducted from the remittance.

12. (B) (3) Local 1408 and the ILA agrees to defend, indemnify and save the Employers harmless against and from all claims, demands, suits or other forms of liability that arise out of or by reason of action taken

by the Employer in reliance upon or compliance with any provision of this Clause 12.

13. (A) (1) Longshore work is to cover all labor used in connection with loading or discharging ships, barges or other floating craft. It will include men engaged in handling cargo to or from point of rest or to or from cars or trucks when handled direct to or from ships. It will include all operators of mechanical equipment used in such operations, including cranes owned by stevedore contractors when qualified operators are available, provided, however, that this shall not require the Employers to alter any existing practices. When a stevedore contractor introduces new mechanical equipment he must endeavor to train men presently in the industry to operate such equipment. It will also cover sorting coopering or reconditioning of cargo when performed in connection with stevedoring work; the handling of ships' stores when not carried by hand up the gangway; the handling of baggage to and from ships' decks of passenger vessels, all mail, dunnaging (excluding bulk separations), rigging (excluding rigging for heavy lifts) and the following operations when vessel is alongside dock; cleaning of cargo areas aboard ship, lashing and securing cargo and the fitting and dismantling of fittings. It will also include gearmen (not mechanics) when assigned to ships; the operation of permanently mounted shipboard cranes and winches, and the handling of lines when performed by stevedores. It also includes opening and closing of hatches on conventional-type vessels with tween decks when working general cargo.

13. (A) (2) The point of rest refererd to in Clause 13(A) is defined as follows on general cargo:

(a) On cargo to be loaded aboard ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is assembled prior to loading aboard ships.

(b) On cargo to be discharged from ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is placed upon completion of discharge from ships.

(c) On cargo to be loaded aboard ships as well as discharged from ships, such cargo will not be considered to be at point of rest until complete carload or truckload lots are completely assembled.

(d) All provisions of this Clause shall apply to refrigerated cargo, but this Clause shall not be so literally or strictly construed as to endanger or risk spoilage of refrigerated cargo.

(e) On cargo other than bulk commodities landed directly from the vessel to trucks or rail cars for movements only within the terminal area to ground storage, the point of rest is that point within the terminal area where the cargo is grounded.

13. (B) (1) The Employer shall give due regard to the following factors:

1. Protecting the safety and health of all men employed in the operation.

2. Regulating stevedoring operations to best accomplish the safe, efficient and orderly movement of cargo.

3. Utilizing modern methods and equipment in the interest of avoiding unnecessary manual labor. Where this is implemented with the result that there will be a change in the operations the Employer will discuss his intentions in advance with the Union to enable both parties to agree on the most efficient operation.

4. Making the best use of skilled manpower in light of the above considerations.

It is distinctly understood and agreed that the Union has the privilege of bringing to the attention of each Employer any practices which the Union feels are not in accord with the spirit of the foregoing. The Employers hereby agree to promptly investigate and give careful consideration to all suggestions and recommendations from the Union in the light of the objectives set forth above. If such procedures still fails to satisfactorily dispose of any such questions, they shall be resolved through the arbitration procedure set forth in Clause 15.

13. (B) (2) Container Agreement

J.M.A. and the Carriers recognize the existing work jurisdiction of the ILA employees covered by their agreements with the ILA over all container work which historically has been performed by longshoremen and all other ILA crafts at container waterfront facilities. Carriers, direct employers and their agents covered by such agreements agree to employ employees covered by their agreements to perform such work which includes but is not limited to:

(a) the loading and discharging of containers on and off ships

(b) the receipt of cargo

(c) the delivery of cargo

(d) the loading and discharging of cargo into and out of containers

(e) the maintenance and repair of containers

(f) the inspection of containers at waterfront facilities (TIR men)

J.M.A., the Carriers, the direct employers and their agents shall not contract out any work covered by this Agreement. Any violations of this provision shall be considered a breach of this Agreement. J.M.A. and the Carriers agree that the payment of container royalties as provided in their agreements is of the essence to this Agreement and, if for any reason during the term of this Agreement such payments cannot be made in their present form, then J.M.A. and the Carriers shall provide, by some other form of assessment, for payment of equivalent amounts to be used for the same purposes as said container royalties are presently used.

J.M.A. the Carriers and ILA agree that the legal fight in defense of the Rules on Containers shall continue with full vigor. It is fully understood that nothing contained in any agreement shall be construed in any way as any waiver by the ILA of its position that the Rules on Containers are valid work preservation rules. Pending such legal appeals, the Rules in said contracts shall be enforced to the extent permitted by law. If the present joint appeals on the Rules on Containers are successful and the Rules are held to be valid then the Rules shall be enforced in all ports covered by this Agreement.

RULES

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other crafts which was performed at deep-sea waterfront facilities by labor covered under the terms and conditions of Deep-Sea ILA Agreements. These rules do not have any effect on work which historically was not performed at a waterfront facility by such labor. To assure compliance with the collective bargaining provisions, the following rules and regulations shall be applied uniformly in the port of Jacksonville to all import or export cargo in containers.

Definitions

(a) Loading a Container—means the act of placing cargo into a container.

(b) Discharging a Container—means the act of removing cargo from a container.

(c) Loading Containers on a Vessel—means the act of placing containers aboard a Vessel.

(d) Discharging Containers from a Vessel—means the act of removing containers from a Vessel.

(e) Waterfront facility—means a pier or dock where vessels are normally worked including a container compound operated by a carrier or direct Employer.

(f) Qualified Shipper—means the manufacturer or seller having a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the export cargo being transported and who is named in the dock/cargo receipt.

(g) Qualified Consignee—means the purchaser or one who otherwise has a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the import cargo being transported and who is named in the delivery order.

(h) Consolidated Container-Load—means a container load of cargo where such cargo belongs to more than one shipper on export cargo or one consignee on import cargo.

RULE 1—CONTAINERS TO BE LOADED OR DISCHARGED BY DEEP-SEA LABOR

(a) Cargo in containers referred to below shall be loaded into or discharged out of containers only at a

waterfront facility by deep-sea labor under the terms and conditions of this agreement

(1) Containers owned, leased or used by Carriers including containers on wheels and trainers), hereinafter "containers", which contain consolidated container loads, which come from or go to any point within a geographic area of any South Atlantic port described by a 50-mile circle with its radius extending out from the center of each port, (hereinafter "geographic area") or

(2) Containers which come from a single shipper which is not the manufacturer ("manufacturer's label) into which the cargo has been loaded (consolidated) by other than its own employees and such containers come from any point within the "geographic area", or

(3) Containers designated for a single consignee from which the cargo is discharged (deconsolidated) by other than its own employees within the "geographic" area and which is not warehoused in accordance with Rule 2(B).

(b) Such labor shall be paid and employed at deep-sea longshore rates under the terms and conditions of the deep-sea labor agreement in the port of Jacksonville, including the provisions for all fringe benefits and any and all other benefits receivable by deep-sea workers in each such Port. No cargo shall be loaded into or discharged out of any container by deep-sea labor more than once.

c) All export consolidated cargo, described in 1(a)(1) and (2) above, shall be received at the waterfront facility by deep-sea labor and such cargo shall be loaded into a container at the waterfront facility for loading aboard ship.

(d) All import consolidated cargo, described in 1(a) (1) and (3) above, shall be discharged from the container and the cargo placed on the waterfront facility where it will be delivered and picked up by each consignee.

(e) No carrier or direct employer shall supply its containers to any consolidator or deconsolidator. No carrier or direct employer shall operate a facility in violation of the Rules on Containers which specifically require that all Rule 1 containers be loaded or discharged at a waterfront facility.

RULE 2—CONTAINERS NOT TO BE LOADED OR DISCHARGED BY DEEP-SEA LABOR

Cargo in containers referred to below shall not be loaded or discharged by deep-sea labor employed under the terms and conditions of this agreement.

A. Export Cargo

(1) All cargo loaded in containers outside the "geographic area".

(2) Containers loaded with cargo at a qualified shipper's facility with its own employees.

(3) Containers loaded with cargo of a single manufacturer (manufacturer's label) at its facilities with its own employees.

(4) Consolidated container loads of mail, household effects of a person who is relocating his place of residence, with no other type of cargo in the container, or personal effects of military personnel.

(5) There shall be no general warehouse exception applicable to export cargo.

B. Import Cargo

(1) All cargo discharged from containers outside the "geographic area".

(2) Containers discharged at a qualified consignee's facility by its own employees.

(3) Consolidated container loads of mail, household effects of a person who is relocating his place of business, with no other type of cargo in the container, or personal effects of military personnel.

(4) Containers of a qualified consignee discharged at a bona fide public warehouse within the "geographic area" which comply with all of the following conditions:

1. The container cargo is warehoused at a bona fide public warehouse.

2. The qualified consignee pays the normal labor charges in and out; and the normal warehouse storage fees for a minimum period of thirty or more days; and stores the cargo for a minimum period of 30 days; and

3. The cargo is being warehoused (a) in the normal course of the business of the qualified consignee; (b) title to such goods has not been transferred from the qualified consignee to another.

The carrier on request will furnish all documents and other information which permits the container Committee in the port to determine whether conditions 1, 2, and 3 have been met. This exception shall not apply where cargo is warehoused for the purpose of avoidance or evasion of Rule 1. It is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a consolidator or de-consolidator.

RULE 3—BATCHING

When an employer-member or carrier uses a trucker to remove or deliver containers in batches, or in substantial number, from or to a terminal to another place of rest (outside of its terminal) where containers are stored pending their delivery to a consignee (or after being received from a shipper and while waiting the arrival of a ship), for the purpose of reducing the work jurisdiction of the labor employed under this agreement, such use is deemed to be batching and evasion of these Rules in violation of the Jacksonville Maritime Association-ILA contract.

RULE 4—HEADLOAD

Where a single qualified shipper sends an export container which contains all of his own cargo to a waterfront facility and such container is not full, the carrier or direct employer may load this container with additional cargo at the waterfront facility. On import cargo, the carrier or direct employer may discharge any such additional cargo and send the remaining cargo in the container to the qualified consignee. The loading or discharging of cargo at the port of Jacksonville shall be performed at a waterfront facility by deep-sea labor employed under the terms and conditions of this agreement.

RULE 5—OVERLAND MOVEMENT OF CONTAINERS FROM THE PORT OF JACKSONVILLE TO ANOTHER PORT

If a carrier moves containers from the port of Jacksonville to another Port for the purpose of evading the Rules on Containers, the carrier is in violation of this Agreement. If the cargo is being moved to another Port in the normal course of business, and not for the purpose of evasion, then such movement is not a violation.

RULE 6—IMPORTERS ADVERTISING EVASION OF RULES

The Circulation, in writing, by importers, of methods developed by them to evade the Rules on Containers by issuing single bills of lading on what are in fact consolidated container loads shall be deemed a violation and all Container Committees shall be advised to stop such evasion at the waterfront facilities.

RULE 7—NO AVOIDANCE OR EVASION

The above rules are intended to be fairly and reasonably applied by the parties. To obtain non-discriminatory and fair implementation of the above, the following principles shall apply:

(a) Geographic Area—Agreement in the Port to the geographic area as provided in Rule 1 is based on present consolidated movement patterns in the port. Should any person, firm or corporation for the purpose of evading the provisions of the Rules on Containers, seek to change such pattern by shifting its operations to, or commencing new operations at, a point outside said agreed-upon geographic area, then either party may raise the question whether said point should be included within the said geographic area, and upon agreement that the purpose of the shift in its operations was to evade the provisions of the Rules on Containers. then said point shall be deemed to be within the said geographic area for the purpose of these rules.

(b) Containers Owned, Leased or Used—Containers owned, leased or used by companies which are affiliated either directly or through a holding company with a carrier or a direct employer shall be deemed to be containers owned, leased or used by

a carrier or direct employer. Affiliation shall include subsidiaries and/or affiliates which are effectively controlled by the carrier or direct employer, its parent, or stockholders or either of them.

(c) Liquidated Damages—Failure to load or discharge a container as required under these rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of Rule 1 and Rule 2 shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been loaded or discharged under the Rules, then the carrier or its agent or direct employer shall pay, to the Joint Container Royalty Fund, liquidated damages of $1,000 per container which should have been loaded or discharged. If any carrier does not pay liquidated damages within 30 days after exhausting its right to appeal the imposition of liquidated damages to the Committee provided in Rule 9(a) below, the ILA shall have the right to stop working such carrier's containers until such damages are paid.

(d) Any facility operated in violation of the Container Rules will not have service applied to it by any direct employer and the ILA will not supply labor to such a facility.

RULE 8—

If any article, section, paragraph, clause or phrase of this Agreement shall, by any State, Federal or other law, or by any decision of any Court or Administrative Agency, be declared or held illegal, void or unenforceable, the entire Agreement shall terminate upon sixty (60) days written notice to the other party hereto and the parties agree to enter into negotiations in an attempt

to renegotiate that provision of the Agreement which was nullified. If no agreement is reached within the sixty (60) day notice period, the ILA shall have the right to strike and J.M.A. shall have the right to refuse to hire employees under this Agreement. The negotiations referred to above shall, under no condition, be subject to the grievance or arbitration provisions of the agreement, or of any Local Agreement.

RULE 9—ENFORCEMENT OF THE RULES ON CONTAINERS

To assure effective, fair and non-discriminatory enforcement of the above rules, the following regulations shall apply:

(a) A committee represented equally by management and union shall be formed and shall have the responsibility and power to hear and pass judgment on any violations of these Rules. Any inability to agree shall be processed as a grievance under the applicable contract except as limited by Rule 8 hereof. A joint committee, known as the South Atlantic District Container Committee, represented equally by management and labor and made up in accordance with Clause 15(C) shall meet at least quarterly each year for the purpose of insuring uniformity in the interpretation of these Rules.

(b) A committee of carriers, together with the South Atlantic District Container Committee will develop uniform documentation which shall be required to be prepared and maintained by all carriers in order to readily identify all Rule 1 containers which are subject to loading or discharging by deep-sea labor. It shall be the obligation of employer-members to clearly mark each container's documentation as to whether or not it is a Rule 1

container, which shall be loaded or discharged. If a container's documentation is not clearly marked, it shall be deemed a Rule 1 container and it shall be loaded or discharged by deep-sea labor at the waterfront facility. With respect to all containers received at or delivered from the waterfront facility, a record of the same shall be made by Checkers or Clerks. All carriers will distribute to all other carriers any and all information and devices which are being used by any person to circumvent the Rules on Containers. Any carrier whose attention is brought to a violation of the Rules shall immediately cease such violation and report the matter to the appropriate Container Committee and to the policing agency provided in (e) below in its port.

(c) Every import container destined to a point within 50 miles of a South Atlantic Port shall be delivered only on a delivery order. Every export container from a point within 50 miles of a South Atlantic Port shall be received only on a dock/cargo receipt. Such delivery orders and dock/cargo receipts shall certify the place of delivery and origin of the container, the name or names of the person to whom the cargo is being delivered and from which it is shipped, the identity of the owner of the cargo, weight of the cargo, identity of the cargo and the origin and final destination of the container. Copies of such delivery orders and dock/cargo receipts shall be available to the local port Container Committee and the policing agency provided for in (e) below.

(d) The Container Committee in each Port shall promulgate to all carriers and direct employers, and to the Container Committees in each Port, any and all interpretations of the Rules on Con-

tainers as and when they are made. This will include uniform interpretations as and when they are issued. The District Container Committee shall also promulgate uniform interpretations to local port Container Committees, as and when they are issued.

(e) Policing Agent—Each Port shall establish a method of policing and enforcing these Rules on a uniform and non-discriminatory basis. No such method shall be implemented until presented to and approved by the District Container Committee.

(f) Council of Container Carriers—There shall be organized promptly a Council of Container Carriers composed of representatives of major container carriers who, with the Employer Negotiating Committee shall meet with the ILA at all regular and special meetings of the South Atlantic District Container Committee, and who shall participate in the discussion and resolution of problems and interpretations of the Container Rules discussed at the said meetings.

(g) Powers of the South Atlantic District Container Committee—In order to permit the fair and non-discriminatory application of the Rules and to encourage the movement of cargo in all South Atlantic ports, the South Atlantic Container Committee is hereby empowered to make such amendments or modifications to these Rules as may be necessary to the equitable application of the principles of these Rules to particular cases. The South Atlantic District Container Committee shall be guided by the rules, resolutions and interpretations of the CONASA-ILA Container Committee when considering similar problems in the South Atlantic District.

RULE 10—CONTAINER ROYALTY PAYMENTS

The Container Royalty Payments required by the collective bargaining agreements shall be payable only once in the Continental United States. They shall be paid in that Port where the container is first handled by longshore labor at longshore rates. The second container royalty payment (provided by paragraph 3 (B) (1) of this agreement shall be continued and shall be used for fringe benefit purposes only, other than supplemental cash benefits, which purposes are to be determined in accordance with that paragraph. Containers originating at a foreign port which are transshipped at a United States port for ultimate destination to another foreign port ("foreign sea-to-foreign-sea containers") are exempt from the payment of container royalties. Container royalty payments shall be assessed against all containers moving across the continental United States by rail or truck under the foreign-to-foreign "LAND-BRIDGE" system. The said royalty payments shall become due for all such containers moving through South Atlantic ports on and after July 1, 1975.

RULE 11

With regard to the container royalties detailed in 3 (B) (1) of the Longshore Agreement the following form is to be filled out by all companies. Payment is to be made only when all of the following conditions are applicable;

(a) On the contents of containers Nineteen (19) feet or larger loaded to or unloaded from vessels engaged in deep-sea offshore trade.

(b) For containers stuffed or stripped by employees not covered by the Longshore Agreement.

(c) On gross tons of 2240 pounds weight, applied only to the contents of each container.

(d) On containers at first port of loading outbound or at last port of discharge inbound. Royalties are not payable on containers shifted or transshipped at intermediate ports.

THIS FORM TO BE FILLED OUT BY ALL EMPLOYERS OF LONGSHOREMEN. PAYMENT MUST BE MADE ONLY WHEN ALL OF THE FOLLOWING CONDITIONS ARE APPLICABLE:

(a) On the contents of containers Nineteen (19) feet or larger loaded to or unloaded from vessels engaged in deep-sea offshore trade.

(b) For containers stuffed or stripped by Employees not covered by the Longshore Agreement.

(c) On gross tons of 2240 lbs. weight, applied only to the contents of each container.

(d) On containers at first port of loading outbound or at last port of discharge inbound. Royalties are not payable on containers shifted or transshipped at intermediate ports.

IF NO CONTAINERS ARE HANDLED THAT FALL WITHIN THIS CATEGORY OR IF CONTAINERS HANDLED ARE EMPTY, EACH EMPLOYER MUST SUBMIT A COPY OF THIS REPORT EACH MONTH, SHOWING "NONE" IN THE APPROPRIATE COLUMN.

(d) On containers at first port of loading outbound or at last port of discharge inbound. Royalties are not payable on containers shifted or transshipped at intermediate ports.

THIS FORM TO BE FILLED OUT BY ALL EMPLOYERS OF LONGSHOREMEN. PAYMENT MUST BE MADE ONLY WHEN ALL OF THE FOLLOWING CONDITIONS ARE APPLICABLE:

(a) On the contents of containers Nineteen (19) feet or larger loaded to or unloaded from vessels engaged in deep-sea offshore trade.

(b) For containers stuffed or stripped by Employees not covered by the Longshore Agreement.

(c) On gross tons of 2240 lbs. weight, applied only to the contents of each container.

(d) On containers at first port of loading outbound or at last port of discharge inbound. Royalties are not payable on containers shifted or transshipped at intermediate ports.

IF NO CONTAINERS ARE HANDLED THAT FALL WITHIN THIS CATEGORY OR IF CONTAINERS HANDLED ARE EMPTY, EACH EMPLOYER MUST SUBMIT A COPY OF THIS REPORT EACH MONTH, SHOWING "NONE" IN THE APPROPRIATE COLUMN.

PAYMENT CONTAINER ROYALTY

Company _____ Date of Filing _____

_____ For the Month of _____, 19____

_____ Wharf _____

No. of Containers	Gross Tons (2240 lbs.) Contained Therein		Amount
_____	_____	_____	_____
		at 35c per ton (Conv. ships)	_____
_____	_____	at 70c per ton (Partially automated ships, as defined in longshore contract)	_____
_____	_____	at $1.00 per ton (Fully automated ships, as defined in longshore contract)	_____
_____	_____	TOTAL _____	_____

ENCLOSED

Check No. _____ Dated _____ On The _____

(Bank)

(Mail check payable to) _____

(Signature)

_____

(Title)

RULE 12—EXECUTION OF AGREEMENT

All carriers utilizing labor employed under the terms and conditions of the South Atlantic Deep Sea, ILA agreements shall be bound by the rules on containers contained in the agreements and the ILA shall not be required to supply labor to carriers failing to execute such agreement.

13. (B) (3) LASH AGREEMENT

This agreement made and entered into by and between the carrier and direct employer members of the J.M.A. and the International Longshoremen's Association, AFL-CIO ("ILA"), its Atlantic Coast District ("ACD") and its affiliated local unions in Jacksonville covers all LASH work at a waterfront facility which includes but is not limited to the receiving and delivery of cargo, the loading and discharging of said cargo into and out of barges, the maintenance of barges at a waterfront facility, except where shipyard maintenance is required and the loading and discharging of barges on and off LASH AND SEABEE ships.

JMA and the Carriers agree that they will not directly perform work done on a waterfront facility or contract out such work which historically and regularly has been and currently is performed by employees covered by JMA-ILA Agreements, unless such work on such waterfront facility is performed by employees covered by JMA-ILA Agreements. The word "agreement" as hereafter used, shall refer to all JMA-ILA agreements.

J.M.A., the Carriers and I.L.A. agree that the following terms and conditions shall be applicable in Jacksonville ports as follows:

(a) All LASH AND SEABEE ships shall be loaded and unloaded exclusively by longshore labor, checked by deep-sea checkers, maintained by the

cooper, carpenter and maintenance locals, all of whom are employed under the terms of this agreement at a waterfront facility (meaning a pier or dock, marshalling area, roadstead or other facility or location where LASH vessels are normally and usually loaded and discharged). All barges shall be loaded and unloaded by longshore labor, employed under terms of this agreement. The employer shall use the gang system in the loading and unloading of the barges.

(b) The gang shall consist of the following men when working:

STEEL AND OTHER HEAVY CARGO

11 deep-sea longshoremen plus
a deep-sea checker and a foreman

GENERAL CARGO

14 deep-sea longshoremen plus
a deep-sea checker and a foreman

(c) The gang shall work as a unit, a gang shall work only one lighter at a time, the gang cannot be broken up so it can work two or more lighters at one time. The gang shall move from lighter to lighter as a gang unit.

(d) The employer shall employ two gangs consisting of 18-men each plus any additional machine operators which are needed in the loading and unloading of the LASH and SEABEE ship.

(e) LASH and SEABEE barges may be loaded or discharged with non-ILA labor only at plants where the stevedoring function has not been performed in the past by longshore labor. Such plant must be one where only one type of various commodities are loaded and discharged, where the

plant is operated by a single manufacturer or processor and where longshore labor may not be used at the waterfront facilities of such plant because of labor agreements with other labor unions. LASH and SEABEE barges loaded or discharged at military facilities shall be subject to the same rules as are applicable to containers loaded or discharged at such facilities. The ILA shall be given a list of LASH and SEABEE barges so worked monthly and a royalty of $2.00 per gross ton of cargo shall be paid in the port where such LASH and SEABEE barge is loaded on or discharged from the LASH and SEABEE vessel. No royalty shall be paid on barge loads of bulk cargoes such as grain, fertilizers, chemicals, scrap metals, waste materials, or other cargoes not subject to load or count. $1.00 of said royalty payment shall be used exclusively for supplemental cash payments to employees covered by the J.M.A.-I.L.A. Agreement, and for no other purpose. The second dollar of the LASH royalty shall be used for fringe benefit purposes only, other than supplemental cash benefits, which are to be determined by the local Trustees. J.M.A. and the Carriers agree that the payment of LASH royalties as provided in their agreements is of the essence to this agreement and, if for any reason during the term of this agreement such payments cannot be made in their present form, then J.M.A. and the Carriers shall provide, by some other form of assessment for the payment of equivalent amounts to be used for the same purposes as said LASH royalty is presently used.

(f) All consolidated barge loads will be loaded or discharged at the pier by employees employed under this agreement out of the barge in which the cargo arrived at the pier. All consolidated

cargo for barges shall be received and delivered at the piers by deep-sea labor.

13. (C) Each employer shall give preference in employment to the gangs which work regularly for him and agrees to divide his work as fairly as possible among such regular gangs in accordance with local custom. When employing extra gangs the Employer is to choose the gang best qualified from those available, but is to give due consideration to suggestion from the Union. When it becomes necessary for the employer to make a change in Gang Foremen he must consult with the Union at least one week prior to his selection. It is incumbent on the Employer to consider the Union's suggestions, and to make every effort to designate a man who is agreeable to both parties.

13. (D) (1) On vessels loading or unloading the cargoes listed below, the following minimum gangs, including gang foremen, shall be used between point of rest and stowage:

(a) Eighteen men on bagged goods, baled waste paper, Egyptian cotton, burlap in rolls and woodpulp in bales when it is being winged out or beamed out. However, when these commodities are loaded to or unloaded from the same hatch with other cargo, a minimum of sixteen men may be used.

(b) Sixteen men on general cargo which is defined as hand stowed or hand unstowed break bulk general cargo.

(c) Fourteen men on unitized cargo such as prepalletized cargo secured by strapping, banding or other means; Dravo-type containers and cargo vans; iron and steel articles such as pipe, angles, channels, plates, reinforcing rods, tinplate, coiled steel, packaged structural steel and bundled wire rods in coils.

(d) Eighteen men plus two drivers including all longshore labor other than lashers on container ships.

(e) When loading or unloading cargo to or from containers (stuffing or stripping) two deep-sea longshoremen, a checker and one deep-sea driver.

(f) When lashing or unlashing of containers is required a lashing gang consisting of one header and six men will be used. At the employers option the men may be brought in one hour before the start.

(g) On barges a 20-man container gang will be used, and the gang will also lash/unlash.

13. (D) (2) When loading scrap iron with magnets, each employer shall continue to use the number of men he formerly customarily used. In no event, however, shall less than three longshoremen be employed with each crane when chutes are being used nor less than two longshoremen be employed with each crane when chutes are not being used. In addition, there will be one Gang Foreman to the ship.

13. (D) (3) When grab buckets or tubs are used with ship's booms and winches for handling bulk cargo, a minimum of seven men per gang will be used, including the Gang Foreman.

13. (D) (4) In lashing and shoring cargo, cleaning, fitting, etc., and any operations not listed above, the Employer shall use the number of men required to safely and efficiently perform the operation.

13. (D) (5) Where hardship is claimed by Union because of unreasonable or burdensome conditions or where work methods or operations materially change in the future, the problem shall first be discussed between the local and Management involved. In the event an agreement cannot be reached, either party may refer the dis-

pute to the Joint Negotiating Committee and, if the matter cannot be resolved by that Committee, either party may then refer the question to an arbitrator in accordance with the procedure set forth in Clause 15(B).

13. (D)(6) There shall be no interference with the Employer's right to shift men from hatch to hatch, ship to ship, dock to ship or ship to dock so long as the number of men shifted from any gang does not reduce the Gang structure below the minimum required as determined by the class of cargo being handled by the gang. In no event shall men be shifted from any gang for the purpose of opening, closing and rigging a hatch to which the entire gang has not been assigned.

The Employer also reserves the right to hire and discharge. It is recognized that the Employer has the right to utilize men in any combination of job classifications for which they are qualified, providing that they receive the pay rate of the highest job classification in which they are employed during their work shift.

13. (E) Neither party shall uphold incompetency, use of narcotics and/or drugs other than those under prescription, shirking of work, insubordination, intoxication at work, the use of abusive language, pilfering or broaching of cargo, or the possession of firearms on the premises by other than security personnel. Personnel guilty of these offenses shall be dealt with as the circumstances require, and in the event a man is convicted of theft, he shall be denied any further employment in the industry.

13. (F) The Management of the Employer's business and the direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically provided in the Agreement, all of the rights, powers and authority Employer had prior to signing of this Agreement are retained by Employer.

14. Seniority Rules shall be decided and enforced on a local level.

15. (A) (1) During the term of this Agreement, the Employer agrees that there shall be no lockouts of the members of the Union and the Union agrees there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slow down, or any other interference or stoppage, total or partial, of the Employer's operation for any cause whatsoever; such causes including but not limited to, unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. The Union shall not be financially responsible for strikes or walkouts not authorized or assented to by the Union.

15. (A) (2) If the Administrator of any fund established under the terms of this Agreement determines that an employer is delinquent in paying the requisite assessments, contributions, royalties or other required payments to the fund when due, he shall immediately notify the Union party hereto with copy to the delinquent Employer. If within 7 days the Employer does not either convince the Administrator he is in fact not delinquent or pay the delinquent account, the Union will be released from its obligations under Clause 15(A) (1) to continue to work for that Employer and shall not dispatch personnel to that Employer until the delinquency is ended. The Employer shall be liable not only for the amount of the delinquency, but for attorney fees, auditing fees, court costs and all other related collection expenses. In the event of disagreement as to the applications of the above, the dispute shall be settled as a grievance under the procedure of Clause 15(B), but omitting the Port Grievance committee and being referred directly to the District Grievance Committee.

15. (B) Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall, no later than 48 hours after such discussions, be referred in writing covering the entire grievance to a Port Grievance Committee composed of one member from a company not involved in the dispute, the Port employer member of the Joint Negotiating Committee, the Port Union member of the Joint Negotiating Committee, and a Union Member not involved in the previous attempts to settle the dispute. In the event this Port Grievance Committee cannot reach an agreement within five days after receipt of the complaint the written record of the dispute shall be referred to the Joint Negotiating Committee, which will function as a District Grievance Committee on the following basis:

There must be present at the Grievance Committee Meeting at least three regular Employer members and three regular Union members, in addition to the members from the Port originating the dispute, as these latter members may participate in the discussions but may not vote. Each side shall have four votes, and if the fifth member of either side is absent he shall authorize his vote to be cast by one of the voting members in attendance. This Grievance Committee shall meet at least quarterly, and in the case of urgent matters it shall make every effort to meet as soon as possible.

A majority decision of this Committee shall be final and binding on both parties and on all Employers signing this Agreement. In the event the Committee is unable to reach a majority decision within 72 hours after meeting to discuss the case, it shall employ a professional arbitrator whose expense and fees, as well as those of any expert witnesses required by the arbitrator are to be borne jointly by the Management and the Union of the Port concerned. Should the Committee be unable to agree on the selection of an arbitrator, they shall request the

assistance of the Federal Mediation and Conciliation Service in designating a suitable arbitrator. Expenses of the Employer members of the District Grievance Committee are to be borne by the Port Employers, and of the Union Members of the District Grievance Committee by the I.L.A.

In the selection of an arbitrator, thought will be given to a person who is knowledgeable and familiar with the problems of the Longshore industry.

Any decision in favor of the Employee involving monetary aspects or discharge shall require the Employer involved to make financial restitution from the time of the complaint concerned, whereas decisions involving working methods or interpretations shall take effect seventy-two hours after being rendered.

15. (C) The above mentioned Joint Negotiating Committee shall consist of an Employer's side of five members, one each from Wilmington, North Carolina; Charles-South Carolina; Savannah, Georgia; Jacksonville, Florida; and Tampa, Florida; and a Union side of the I.L.A. representative from each of these ports.

Each Employer vacancy shall be filled by the Port with the vacancy, and each Union vacancy by the Southeastern Dock and Marine Council of the I.L.A.

15. (D) The Joint Negotiating Committee upon written request of any Employer signatory to this Agreement or any Local covered by this Agreement shall determine whether new commodities or new types of packing present hazards or discomforts in handling which make it necessary to add such items to now-existing penalty classifications. Such decisions shall be final and binding on all signatories to this Agreement, but where no majority decision is reached by the Committee, this shall constitute a denial of such addition.

15. (E) It is understood and agreed that there will be no changes made in this Agreement except by mutual consent in writing and with the full knowledge of all members of the joint Negotiating Committee. All interpretations of this Agreement will be made in accordance with the provisions of Clause 15.

15. (F) The Union agrees that this Agreement is intended to cover all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this Agreement. Anything not contained in this Agreement shall not be construed as being part of this Agreement.

16. Both Parties agree to cooperate with all efforts to provide safe working conditions including such efforts of the United States Department of Labor and of all Portwide Longshore Safety Councils and company safety programs. Where neither such Councils nor such company programs now exist, the parties shall cooperate in establishing one or the other, with meetings to take place at least quarterly.

The requirements of the Occupational Safety and Health Administration shall be binding on both Parties. All personnel reporting for work must be dressed so that no additional hazard is created and must wear safety shoes.

17. J.M.A. agrees to participate in the attached JSP program, in order to preserve the job security of longshore employees. The J.M.A. further agrees that Clause 15(A)(1) shall not apply in the event a carrier does not subscribe to the JSP agreement and the ILA elects to refuse to work for that carrier.

18. It is the intention and purpose of all parties hereto that no provision or part of this Agreement shall be violative of any Federal or State law.

For the International Longshoremen's Association	For the Jacksonville Maritime Association
Landon L. Williams, President Local 1408	C. H. McCarthy, Jr. President
	V. McDaniel, Jr. Labor Negotiator

Jacksonville Maritime Association represented the following employer members in signing this collective bargaining agreement:

Caldwell Shipping Co.
Eller & Co.
Gulf Terminal International
Harrington & Co.
Jacksonville Bulk Terminals, Inc.
Kaufmann Shipping Co.
McGiffin & Co.
South Atlantic Terminals, Inc.
Southeastern Maritime Co.
South Carolina Stevedoring Corp.
Stevens Shipping & Terminal Co.
Strachan Shipping Co.

JOB SECURITY PROGRAM

AGREEMENT made the 13th day of November, 1977 by and between

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, its ATLANTIC COAST DISTRICT

("ACD"), its SOUTH ATLANTIC & GULF DISTRICT ("SAGD") and its affiliated deepsea local unions in each port from Maine to Texas (all collectively "ILA")

and

THE UNDERSIGNED CARRIERS who operate ships in North Atlantic, South Atlantic and Gulf Ports and utilize or contract for labor to perform longshore and related work in connection with the deepsea longshore operations of such ships (herein "CARRIERS").

1. (a) Recognition: ILA recognizes and has bargained with said CARRIERS and the CARRIER recognizes and have bargained with the ILA as Collective Bargaining agent on the issue of Job Security of employees represented by ILA and employed in various ports from Maine to Texas where such employees are employed to load and unload the Carriers' ships and to perform work ancillary thereto.

(b) Purpose of Job Security Program: The new Job Security Program (JSP) concept is to be undertaken by the Carriers, in order to protect and preserve the job security of employees represented by the ILA in each of the ports listed in Appendix A and to protect the local port plans described in Paragraph 2 hereof from shortfalls which may take place after October 1, 1977.

2. Local Port Plans Protected by Job Security Program: JSP is intended to protect shortfalls, as defined in paragraph 5, in any of the following local port plans:

i. Guaranteed Annual Income Plans (GAI)

ii. Pension Plans

iii. Welfare Plans (hospitalization and medical plans)

3. Employees Protected: JSP will protect employees presently employed in each of the local Ports and, who as a result of local negotiations are eligible under local plans

as of October 1, 1977, and/or each succeeding October 1st of each contract year.

4. Liability for Shortfalls: The liability for shortfalls provided for in this JSP agreement is to be undertaken by the Carriers in accordance with the assessment method set forth in Appendix B. The Carriers shall place into effect a tonnage assessment calculated in accordance with the method set forth in Appendix B, within ninety (90) days after ratification of this agreement, in an amount considered by them necessary to meet the needs of JSP during the next six month period. After such six-month period, the level of assessment shall be reviewed by the Carriers on a quarterly basis, and shall be increased, decreased, or suspended depending upon experience. The above assessments shall be collected, as necessary, from the Carriers by the administrative agency created by the Carriers which shall pay out the shortfall payments required by this agreement.

5. Shortfall Criteria: A shortfall means a deficit in contributions in any of the three local port plans described in Paragraph 2 above and which meets each of the following criteria:

(a) A shortfall must occur after October 1, 1977;

(b) A shortfall must result from a loss of manhours (or tonnage, if assessments are on a tonnage (basis) and not be caused by strike.

6. Local Port Plans Subject to Individual Port Negotiations: Each of the local port associations shall individually negotiate and establish with the local representatives in such ports in the traditional manner the provisions of the local port plans in such ports to be effective as of October 1, 1977 and for the remaining term of the various agreements with the ILA pertaining to such ports.

7. Individual Ports to Fund, Assess and Administer Local Port Plans: The funding of the local port plans shall be based upon actuarially and/or statistically sound principles resulting in a fair and equitable assessment in each local port either on an hourly or on a tonnage basis, or on both, as determined by each local port association, which assessments shall be based upon statistically sound principles intended to create sufficient revenue over the life of the collective bargaining agreements to support such plans in each local port. Such assessments shall be reviewed annually by each local port association for the purpose of adjusting contributions in GAI, Pension and Welfare provided by the collective bargaining agreement and so as to continue to provide for manhours or tonnage which is anticipated to continue shall not be included in such adjusted contributions. The said local port plans shall be controlled as provided in the local port collective bargaining agreements. The distribution of benefits from the said plans shall be made by the local port association and/or the trustees in each local port as in the traditional manner. JSP shall be furnished with such information by each local port association, which becomes a subscriber of said JSP, as may be necessary to establish compliance with the provisions of this program by each local port association.

8. Administration of the Job Security Program: JSP shall be administered by the Carriers as they in their own discretion determine. The expenses of the job security program shall be paid by the Carriers. On request, ILA, the subscribing port associations or jointly administered funds, will be furnished with all pertinent information relating to the amount of assessment collected and the disbursement of such JSP assessment.

9. Signatories: Each Carrier, private or governmental, which utilizes or contracts for employees covered by this agreement shall be required to execute this agreement

and to furnish any undertaking required for faithful performance of the requirements of this agreement, provided, however, that no Carrier shall be required to furnish such an undertaking to any local port association unless such association subscribes to this agreement and agrees to be bound by its terms and conditions. If any Carrier does not subscribe to the JSP Agreement, the ILA shall have the right not to work on the loading and discharging of its ships or any work ancillary thereto.

10. Term: This Agreement shall remain in effect for the period of October 1, 1977 to and including September 30, 1980.

IN WITNESS WHEREOF the undersigned Carriers and the ILA have affixed their signatures the day and year first above written:

Name of Carrier:_____

by:_____

Name of Carrier:_____

by:_____

Name of Carrier:_____

by:_____

Name of Carrier:_____

by:_____

Name of Carrier:_____

by:_____

Name of Carrier:_____

by:_____

International Longshoremen's Association, AFL-CIO

by:_____

President

by:_____

Secretary

Atlantic Coast District ILA, AFL-CIO

by:_____

President

by:_____

Secretary

South Atlantic and Gulf District ILA, AFL-CIO

by:_____

President

by:_____

Secretary

November 13, 1977

ATTACHMENT "B"
JSP TONNAGE ASSESSMENT

In order to meet the obligations arising under the collectively bargained Job Security Program (JSP) entered into by and between the CARRIERS and the International Longshoremen's Association, AFL-CIO, its Atlantic Coast District ("ACD"), its South Atlantic and Gulf District ("SAGD") and its affiliated deep-sea local unions in each port from Maine to Texas (all collectively "ILA"), for shortfalls in contributions to Guaranteed Annual Income (GAI) plans, Pension plans and Welfare plans (hospitalization and medical plans), as well as administrative expenses of operating said program, the following tonnage assessment method for the three (3) year period ending September 30, 1980 is hereby agreed to as an integral part of said collectively bargained JSP Program.

1. TONNAGE ASSESSMENT

(a) Each vessel carrier (both private and governmental) shall be responsible for an assessment amount per ton on each ton of cargo loaded or discharged in the ports listed in Appendix "A" of the JSP Program, during the period December 1, 1977 to September 30, 1980 in accordance with the assessment method set forth below.

(b) Effective December 1, 1977, and to continue until March 31, 1978, a tonnage assessment on each weight ton of 2240 lbs. shall be assessed on the following cargo in the following amounts:

i.	Automated cargo	20c per ton
ii.	Break-bulk cargo	12c per ton
iii.	Bulk cargo	2c per ton

(c) On or about April 1, 1978 and on a quarterly basis thereafter, the Carriers shall estimate the total obligations for shortfall incurred to date from all sources including information supplied by the local Port Associations and shall either increase, decrease, adjust or suspend such assessment depending upon experience. Each such assessment shall be in the same proportion as the initial assessment set forth above, namely break-bulk tonnage shall pay 60% of the rate paid by automated tonnage and bulk tonnage shall pay 10% of the rate paid by automated tonnage.

(d) Such tonnage assessment amounts shall be collected as necessary from the Carriers by the administrative agency (to be known as the JSP Agency) created by the Carriers which shall pay out the shortfall payments required by this Agreement. The local Port Associations shall supply to the JSP Agency, on a timely basis, such statistical information necessary to generate invoices and to cooperate with the JSP Agency in connection therewith. The JSP Agency shall hold such amounts in

interest-bearing accounts or in appropriate investment accounts and shall pay out such amounts only for obligations under the JSP Program and the expenses of administration thereof.

2. DEFINITIONS

"Automated Cargo" means any cargo carried by an automated method of cargo movement such as container, Ro-Ro, LASH, SEABEE, or any other cargo movement method having a productivity equal to or greater than any of the foregoing, other than non-containerized break bulk cargo.

"Break-bulk Cargo" shall mean cargo loaded or discharged in the traditional manner on conventional lift-on/lift-off ships and shall include cargo in containers or LASH or SEABEE barges which is handled in a break-bulk manner by employees covered by this Agreement.

"Bulk Cargo" shall mean ship loads, or partial ship loads of 1,000 tons or over, of commodities not subject to load or count such as grain, fertilizers, chemicals, scrap metals, waste materials or sugar.

3. JSP AGENCY

The Carriers signatory to the JSP Program shall create the JSP Agency, which shall have a governing board and may employ administrative employees, as well as consultants, actuaries, accountants, attorneys and such other persons as may be needed to fully implement the JSP Program. The Governing board shall be chosen in a manner to be set forth in either Articles of Incorporation, Articles of Association, and/or By-Laws of said Body. Said documents shall provide for the management of the JSP Program and shall, also, provide for the power of the governing body to do all things that a Board of Directors of a corporation may do under the provisions

of the Not-For-Profit Corporation Law of the State of New York, including but not limited to the borrowings of such funds as may be necessary to meet the obligations of the JSP Program.

4. AMENDMENTS

This Appendix "B" may be amended at any time by the mutual consent of the Carriers and ILA. The Carriers shall provide for the making of a study within the first year of the contract term which study will examine into the assessment rates, tonnage definitions and any and all other matters which may be referred for study by the Carriers. Such study shall be utilized as a basis for any mutual amendments which the parties may agree to. The determination as to any amendments shall not be subject to arbitration.

WAREHOUSE AGREEMENT

Between the

Jacksonville Maritime Association, Inc.

and the

International Longshoremen's Association

LOCAL NO. 1408-A

1. This agreement was made and entered into on the 28th day of November, 1977 by and between the Jacksonville Maritime Association, Inc. representing its direct employer members, hereinafter known as the Party of the First Part and the International Longshoremen's Association representing its subordinate Local 1408-A, hereinafter known as the Party of the Second Part.

2. This agreement shall become effective at 12:01 A.M. on October 1, 1977 and shall continue in effect until midnight, September 30, 1980, and covers all warehouse work as designated herein at the port of Jacksonville, Florida.

3. (A) Warehouse work wages (hourly) effective October 1, 1977.

	Straight Time	Overtime
Headers	$7.55	$11.325
Tractor & Lift Truck Drivers	7.45	11.175
Warehousemen	7.35	11.025
Crane & Bulldozer Operators	7.95	11.925

The above rates shall be increased by the following amounts effective with the following dates:

	Straight Time	Overtime
12.01 A.M. October 1, 1978	$ .80	$ 1.20
12:01 A.M. October 1, 1979	.80	1.20

3. (A) (1) Fringe benefits: The employers agree to contribute into the fund for Pension, Welfare, Vacation and Holiday Benefits the following amounts per man hour commencing on the dates listed:

Effective 12:01 A.M. October 1, 1977	$2.595
Effective 12:01 A.M. October 1, 1978	2.815
Effective 12:01 A.M. October 1, 1979	3.195

The fund shall continue to be administered by a Board of six Trustees, three of which will be appointed by each party to serve until they resign or are replaced by the party they represent. The parties signatory to this Agreement further agree to be bound by the terms and conditions of the Trust Agreement, as amended or extended, establishing this fund and governing its administration.

3. (A) (2) Each employer will submit to the local union and the Trustees of the Pension, Welfare and Vacation Fund quarterly reports of hours worked, individually by men, for all work covered under this Agreement. The local Trustees shall institute whatever auditing procedures they deem necessary to verify these reports.

3. (B) It is distinctly understood and agreed that labor used between points of rest and the ship is considered Stevedore Labor, and is not covered under this agreement. Point of rest is defined as the point from which cargo moves direct to ship or vice versa whether it be Warehouse floor, Railway car or other vehicle.

3. (C) Men will be paid on a thirty (30) minute basis and when they have worked five (5) minutes or more of any thirty (30) minute period, shall be paid for the full thirty (30) minutes.

3. (D) Work Week is defined as being from 8:00 A.M. Monday to 8:00 A.M. Monday.

3. (E) Starting times for weekdays shall be 8:00 A.M., 1:00 P.M., and 7:00 P.M. Starting times for Saturdays, Sundays and Holidays shall be 8:00 A.M. and 7:00 P.M.

3. (F) Ice water is to be furnished by employer, especially in hot weather.

4. (A) A differential of 20c per hour in straight time and 30c per hour in overtime will be added to the rates specified in Clause 3(A) when the following commodities are handled:

Asbestos Fibre
Bone Meal
Bones in Bulk
Calcium Nitrate (Not Calcium Ammonium Nitrate)
Carbon Black
Caustic Soda
Cement in Bags or Bulk
Chloride of Lime
Coal
Coke
Copper Sulphate in Bags
Creosoted Materials
Cyanamide
Feather Meal
Fish Meal and Fish Scraps
Grain in Bulk and Dunnaging over Grain
Green Salted Hides
Guano, Bird and Whale
Insecticides including but not limited to D.D.T., Cotton Dust, or Toxaphene, packaged in paper bags or paper drums
Meat Meal and Meat Scrap
Paris Green
Peroxide in Fiber Drums
Phthalic Anhydride
Powdered Arsenic
Salt Cake

Soda Ash
Sulphur and Dunnage over Sulphur
Tankage
Tin Scrap in Bales
Treated Lumber Products (not creosoted) when loaded at creosote plant
Crude Iodine
Magnesite
Tecmangam
Tetra Tetra Ethyl Lead
Sodium Silico Flouride

4. (A) (1) A differential of 50c per hour in straight time and 75c per hour in overtime will be added to the rates specified in Clause 3(A) when the following commodities are handled

Castor Meal Expeller
Castor Pumace

4. (A) (2) When the commodities listed above in Clauses 4(A) and 4(A) (1) are handled, all men in the gang including fork operators will receive the applicable differential specified.

4. (B) A differential of 20c per hour in straight time and 30c per hour in overtime will be added to rates specified in Clause 3(A) for work performed in refrigerated cars whenever cargo is being handled that has been or will be carried at temperature below 32 degrees F. When handling refrigerated cargo in conjunction with ice the same differential will apply while handling such cargo and while handling the ice. The differentials will be paid to all men working in spaces listed. In the event the Longshore Contract currently being negotiated is changed in regards to refrigerated cargo, Warehouse Contract shall be the same as Longshore Contract, however, Warehouse wage rates shall apply.

4. (B) (1) Gangs ordered for work on refrigerated cargo will be notified in advance in order that they may secure sufficient clothing.

4. (C) Explosives and Ammonium Nitrate to be paid for at double the straight time and overtime rates (whichever is applicable) as specified in Paragraph 3.

4. (D) All men in the gangs shall receive the above differentials when handling these items. No differentials to be paid unless amounting to one-half (½) hour or more, actual continuous working time.

5. The basic working day shall consist of eight (8) hours, and the basic working week shall consist of forty (40) hours. Men shall work any night in the week, or on Sundays, Holidays, or Saturdays, when required (except as provided in Clause 6 for work on Labor Day, Christmas Day, New Year's Day, and the Fourth of July). Except for holidays specified in Clause 6 straight time rate shall be paid for any work performed from 8:00 A.M. to 12 Noon and from 1:00 P.M. to 5:00 P.M. Monday through Friday inclusive. Work at all other time, including specified holidays, to be paid for at overtime rates, except as provided in Clause 6 for work on Christmas Day, Labor Day, New Year's Day and the Fourth of July.

6. The following holidays will be observed:

January 1 .....New Year's Day
January 15 .....Martin Luther King's Birthday
February 12 .....Abraham Lincoln's Birthday
February, 3rd Monday ..George Washington's Birthday
Good Friday .....Good Friday
May, Last Monday .....National Memorial Day
July 4 .....Independence Day
September, 1st Monday ..Labor Day

October, 2nd Monday ...Columbus Day
November 11 .....Armistice Day
National Election Day ..One Annually
November,
4th Thursday .....Thanksgiving Day
December 24th .....Christmas Eve
December 25th .....Christmas Day
December 31st .....New Year's Eve

When any of these holidays fall on Sunday, the following Monday shall be observed to the extent of paying overtime rates and applying the 8-hour minimum period. No work will be performed on New Year's Day, Independence Day, Labor Day and Christmas Day, nor before 7:00 A.M. on the days following these holidays, nor after 3:00 P.M. on Christmas Eve or New Year's Eve, except for ships which can be finished by 5:00 P.M. and except in case of fire or where property is in danger. On Christmas Eve or New Year's Eve men working will be guaranteed six hours overtime pay unless they actually work after 3:00 P.M. in which case they will be paid 8 hours overtime. When warehouses are worked because of fire or where property is in danger on any of the four "no work" holidays, double the straight-time rates as specified in Clause 3(A) will be paid.

Time off from work will be allowed to men to vote on State and National election days.

6. (A) Any new machinery to be used for the purpose of doing Warehouse work, the employer must give ample time for the employee to be trained.

7. (A) It is understood and agreed that members of Local No. 1408-A shall be given employment if they are available and they can satisfactorily qualify as to physical fitness and experience. The employer is to des-

ignate the number of men to be employed and reserves the right to hire and discharge. That all the men to be hired by the header designated by the employer, however, the employer reserves the right to reject men if they feel that they are not qualified.

7. (A) (1) Each warehouse terminal such as Talleyrand, Blount Island, S.C.L., Commodore Point, Occidental, etc., shall have a warehouse foreman (header).

7. (B) In the event the Union files a complaint with the employer regarding the discharge of a member within the 24 hours after his dicharge, the matter will be referred to Grievance Committee consisting of two men chosen by the Union and two men chosen by the employer. This committee must, within 48 hours after the man was discharged, either reach a majority decision or select a fifth man satisfactory to both sides. A majority decision of either of these Boards shall be final and binding on both sides. If it is found that the employee was unjustly discharged the employer will re-instate him and pay all wages lost up to the time the decision was reached by the Committee or the time the fifth member was selected, which-ever occurred sooner.

7. (C) The use of abusive language shall not be countenanced by either party.

7. (D) Both parties agree that upon request of either party, they will fix some mutually convenient time to meet and discuss a seniority clause in the light of any agreement on seniority which may be adopted elsewhere in the South Atlantic and Gulf Coast District of the I.L.A. The parties shall dispose of the matter by negotiation. If as a result of such negotiations the parties decide to include a clause on Seniority in this agreement, such clause shall not in any way infringe on the employ-

er's right to refuse employment to any person whom he considers physically or mentally unfit to efficiently perform his duties.

8. Gangs ordered to work on week days, Monday through Saturday, will be guaranteed 8 hours time at the prevailing rate. If ordered back after the meal hour, they shall be guaranteed a minimum of 4 hours at the prevailing rate.

In the event men are ordered for 7:00 A.M. they shall be paid 1 hour O.T. from 7:00 A.M.-8:00 A.M. and 8 hours from 8:00 A.M.

On Sundays and Holidays there will be a minimum call of 8 hours.

In the event men are prevented from working by weather conditions, they shall be guaranteed a minimum of 2 hours at the full prevailing rate for the first 2 hours of the period and running time thereafter unless dismissed. If ordered back they shall be guaranteed a minimum of 2 hours at full prevailing rates the first two hours of the second period and running time thereafter unless dismissed (Mondays through Sundays, including Holidays).

On any additional men ordered after original ordering period four (4) hours call time will apply.

8. (A) Hiring Procedure—Each employer will notify the hall each day as to the number of men he will require the following day.

8. (B) Minimums are outlined in paragraph 8. Guarantee Wages: No provision for Guaranteed Annual Income is included in this agreement. If during the tenure of this contract other major Florida Ports, South Florida Ports excepted, adopt a GAI Plan, then parties subject to this agreement will re-negotiate this particular item to their mutual satisfaction.

9. The following meal hours are to be observed:

Breakfast—(When same gangs are to work beyond 8:00 A.M.) 6:00 A.M.-7:00 A.M.

Mid-Day Dinner—12:00 Noon-1:00 P.M.

Super—(When same gangs are to work beyond 7:00 P.M.) 6:00 A.M.-7:00 P.M.

Midnight Lunch—12:00 Midnight-1:00 A.M.

10. (A) Present payroll practices will be continued, however, should a new weekly pay-off system be adopted between the Employers and ILA Local 1408, then this system would apply to Warehouse Local 1408-A.

10. (B) (1) Commencing on October 1, 1968, the employer agrees to deduct from the wages of the employees working under this Agreement National and District Union fees for each hour paid and local Union fees, provided, however, that there be first presented to the Employer an authorization in the form set forth below:

CHECK-OFF AUTHORIZATION

To: (Employers) of Jacksonville Maritime Association and any other Employer with I.L.A. Contracts.

I hereby assign to the International Longshoremen's Association, AFL-CIO, and hereby direct my Employer to deduct from the wages received by me by reason of my employment under the collective bargaining agreements with the ILA and its subordinate local No. 1408, 1408-A and 1597 as Service fees the sum of 1 per cent per straight time base rate hour National and District Service fees for each hour paid to me and 5 per cent of my gross pay as local service fees, and to pay this sum directly to the ILA and the local. This assignment shall remain in effect during the term of the present collective bargaining agreement unless revoked by written notice to the Employer, which notice is effective as to work per-

formed for such Employer after receipt of said notice.

Date	Signature
Social Security Number	Witness

10. (B) (2) The employer agrees to make monthly remittances of the amounts deducted from employees' wages no later than the third Wednesday of each month for the preceding month, with that portion representing the per capita dues to be sent to I.L.A. Headquarters and the balance of the dues sent to the office of Local No. 1408-A. Should an employee revoke the authorization, the employer further agrees to immediately notify Local No. 1408-A.

Reasonable administrative expenses of the Check Off may be borne by I.L.A. and the amount deducted from the remittance.

10. (B) (3) Local No. 1408-A and the I.L.A. agree to defend, indemnify and save the employers harmless against and from all claims, demands, suits, or other forms of liability that arise out of or by reason of action taken or not taken by the employer in reliance upon or compliance with any provisions of this Clause 10.

11. The point of rest is defined as follows on general cargo:

(a) On cargo to be loaded aboard ships, that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo is assembled prior to loading aboard ships.

(b) On cargo to be discharged from ships that point or place in the pier or wharf area or in the transit shed within the ship's berth where cargo

is placed upon completion of discharge from ships.

(c) On cargo to be loaded aboard ships as well as cargo to be discharged from ships, such cargo shall not be considered to be at point of rest until complete carload or truckload lots are completely assembled.

(d) All provisions of this Clause shall apply to refrigerated cargo, but this Clause shall not be so literally or strictly construed as to endanger or risk spoilage of refrigerated cargo.

12. The employer shall give due regard to the following factors:

1. Protecting the safety and health of all men employed in the operation.

2. Regulating stevedoring operations to best accomplish the safe, efficient and orderly movement of cargo.

3. Utilizing modern methods and equipment in the interest of avoiding unnecessary manual labor.

4. Making the best use of skilled manpower in the light of the above considerations.

It is dictinctly understood and agreed that the Union has the privilege of bringing to the attention of each employer any practices which the Union feels are not in accord with the spirit of the foregoing. The employers hereby agree to promptly investigate and give careful consideration to all suggestions and recommendations from the Union in the light of the objectives set forth above. If such procedures still fails to satisfactorily dispose of any such questions, they shall be re-

solved through the arbitration procedure set forth in Clause 15.

13. Neither party shall uphold incompetency, shirking of work, insubordination, intoxication at work, the use of abusive language, pilfering or broaching of cargo. Personnel guilty of these offenses shall be dealt with as the circumstances require, and in the event a man is convicted of theft he shall be denied any further employment in the industry.

14. Management of the Employer's business and the direction of the work forces in the operation of its business are exclusively vested in the Employer as functions of Management. Except as specifically provided in this Agreement, all of the rights, powers and authority Employer had prior to signing this Agreement are retained by Employer.

15. During the term of this Agreement the Employer agrees that there shall be no lockouts of the members of the Union, and the Union agrees that there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interference or stoppage, total or partial, of the Employer's operation for any cause whatsoever; such causes including but not limited to unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. The Union shall not be financially responsible for strikes or walkouts not authorized or assented to by the Union.

16. Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall, not later than forty-eight hours after such discussions, be referred in writing covering the entire grievance to a Port Grievance Committee composed of one member from a company not involved in the dispute, the Port Employer member of the Joint Negotiating Committee, the Port Union Member of the Joint Negotiating

Committee, and a Union member not involved in the previous attempts to settle the dispute. In the event this Port Grievance Committee cannot reach agreement within five (5) days after receipt of the complaint, the written record of the dispute shall be referred to the Joint Negotiating Committee which will function as a District Grievance Committee on the following basis:

There must be present at the Grievance Committee meeting at least three regular Employer members and three regular Union members, in addition to the members from the Port originating the dispute as these latter members may participate in the discussion but may not vote. Each side shall have four votes, and if the fifth member of either side is absent he shall authorize his vote to be cast by one of the voting members in attendance. This Grievance Committee shall meet at least quarterly, and in the case of urgent matters it shall make every effort to meet as soon as possible.

A majority decision of this Committee shall be final and binding on both parties and on all Employers signing this Agreement. In the event the Committee is unable to reach a majority decision within seventy-two (72) hours after meeting to discuss the case, it shall employ a professional arbitrator whose expenses and fees as well as those of any expert witnesses required by the arbitrator are to be borne jointly by the Management and Union of the Port concerned. Should the Committee be unable to agree on the selection of an arbitrator, they shall request the assistance of the Federal Mediation and Conciliation Service in designating a suitable arbitrator. Expenses of the Employer members of the District Grievance Committee are to be borne by the Port Employers, and of the Union members of the District Grievance Committee by the I.L.A.

Any decisions in favor of an Employee involving monetary aspects or discharge shall require the Employer involved to make financial restitution from the

time of the complaint concerned, whereas decisions involving working methods or interpretations shall take effect seventy-two (72) hours after being rendered.

17. The above mentioned Joint Negotiating Committee shall consist of an Employer's side of five members, one each from Wilmington, North Carolina, Charleston, South Carolina; Savannah, Georgia; Jacksonville, Florida; and Tampa, Florida; and a Union side of one I.L.A. representative from each of these Ports.

Each Employer vacancy shall be filled by the Port with the vacancy, and each Union vacancy by the Southeastern Dock and Marine Council of the I.L.A.

18. The Joint Negotiating Committee upon written request of any Employer signatory to this Agreement or any Local covered by this Agreement shall determine whether new commodities or new types of packing present hazards or discomfort in handling which make it necessary to add such items to now existing penalty classifications. Such decisions shall be final and binding on all signatories to this Agreement, but where no majority decision is reached by the Committee, this shall constitute a denial of such addition.

19. It is understood and agreed that there will be no changes made in this Agreement except by mutual consent in writing and with full knowledge of all members of the Joint Negotiating Committee. All interpretations of this Agreement will be made in accordance with the provisions of Clause 15 thru 20.

20. The Union agrees that this Agreement is intended to cover all matters affecting wages, hours and other terms and conditions of employment and that during the term of this Agreement the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this

Agreement. Anything not contained in this Agreement shall not be construed as being part of this Agreement.

21. Both parties agree to cooperate with all efforts to provide safe working conditions including such efforts of the United States Department of Labor and all other portwide Longshore Safety Councils and Company Safety Programs. Where neither such Councils nor such Company programs now exist, the parties shall cooperate in establishing one or the other, with meetings to take place at least quarterly. The requirements of the Occupational Safety and Health Administration shall be binding on both parties. All personnel reporting for work must be dressed so that additional hazard is not created and must wear Safety Shoes.

22. It is the intention and purpose of all parties hereto that no provision or part of this Agreement shall be violative of any Federal or State Law.

Effective October 1, 1977

WAREHOUSE AGREEMENT

Between the

JACKSONVILLE MARITIME ASSOCIATION, INC.

and the

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL NO. 1408-A

For the International Longshoremen's Association

Landon L. Williams, President, Local 1408-A

For the Jacksonville Maritime Association, Inc.

C. H. McCarthy, Jr., President

V. McDaniel, Jr., Labor Negotiator

Jacksonville Maritime Association represented the following employer members in signing this collective bargaining agreement:

Caldwell Shipping Company
Eller & Co.
Harrington & Co.
Jacksonville Bulk Terminals, Inc.
Kaufmann Shipping Co.
McGiffin & Co.
Port Carriers, Inc.
South Atlantic Terminals, Inc.
Southeastern Maritime Co.
Southern Carolina Stevedoring Corp.
Strachan Shipping Co.

CLERKS AND CHECKERS AGREEMENT

Between the

Jacksonville Maritime Association

and the

International Longshoremen's Association

LOCAL NO. 1593

1. This agreement was made and entered into on the 16th day of November, 1977, between the Jacksonville Maritime Association representing its member companies, hereinafter known as the party of the first part, and the South Atlantic and Gulf Coast District of the International Longshoremen's Association representing its subordinate Local No. 1593, hereinafter known as the Party of the second part.

2. This agreement shall be in effect until the date of termination of the current Longshore Labor Agreement covering work in accordance with job classifications in Clause 3 below at the Port of Jacksonville under control of the Party of the first part.

3. (A) (1) It is mutually agreed that if any adjustments are made in the basic hourly wage of longshoremen in accordance with the provisions of Clause 3 (A) of the Longshore Agreement, the same adjustments in cents per hour in basic hourly wage for all job classifications covered by this agreement shall be made effective at the same times as provided in the Longshore Agreement.

3. (A) (2) Wages per hour, according to job classification, in accord with the above clause, shall be as follows:

(a) Chief Shipside Clerk in charge (Head Checker), Timekeepers, Bookman/Cargo Spotters—Sunny Point Only:

Effective 6/1/77		Effective 10/1/77	
Straight	Overtime	Straight	Overtime
$ 9.40	$14.10	$ 9.90	$14.85

Effective 10/1/78		Effective 10/1/79	
Straight	Overtime	Straight	Overtime
$10.70	$16.05	$11.50	$17.25

(b) Receiving and Delivery Clerks:

Effective 6/1/77		Effective 10/1/77	
Straight	Overtime	Straight	Overtime
$ 9.10	$13.65	$ 9.10	$13.65

Effective 10/1/78		Effective 10/1/79	
Straight	Overtime	Straight	Overtime
$ 9.90	$14.85	$10.70	$16.05

(c) Weighers, Tallymen, Checkers and Samplers:

Effective 6/1/77		Effective 10/1/77	
Straight	Overtime	Straight	Overtime
$ 8.90	$13.35	$ 8.90	$13.35

Effective 10/1/78		Effective 10/1/79	
Straight	Overtime	Straight	Overtime
$ 9.70	$14.55	$10.50	$15.75

3. (B) (1) It is mutually agreed that during the life of this Agreement, the Employers will contribute into a fund for pension, welfare, vacation and holiday benefits the same amounts in cents per man-hour as the Employer for those purposes contribute in accordance with the provisions of Clause 3 (B) of the Agreement with Local No. 1408 and any changes in the amount of such man-hour Employer contributions for hours worked under this Agreement shall become effective on the same dates as the corresponding changes in Employer contributions for hours worked under the Agreement with Local No. 1408 become effective.

3. (B) (2) The eligibility requirements for benefits and the provisions under which these funds are to be

held and administered will be the same as are agreed to pursuant to the Agreement with Local 1408 and men covered by this Agreement shall participate in the benefits of the container royalty payments established under the Agreement with Local No. 1408.

3. (B) (3)

(a) This "Guaranteed Annual Income Plan" is established to assist those men who have steadily worked as Longshoremen, Clerks, or Checkers in the Ports of Morehead City, Wilmington, Southport, Georgetown, Charleston, Port Royal, Savannah, Brunswick, St. Mary's, Fernandina, Jacksonville, Tampa and Port Manatee, over the years, and who may in the future find their work opportunities reduced the point an income supplement is needed. It is not a plan for supplementary income to men already receiving adequate work, and in viewing its provisions the parties to the agreement ask all concerned to interpret its provisions only to the benefit of the men who are denied work opportunity through no fault of their own, and who remain ready and willing to work at all times.

(b) To implement the Plan there shall be established a Trust Agreement and a board of ten Trustees, five of which shall be appointed by each party, to serve until they resign or are replaced by the Party they represent. The Trustees shall have the authority to take all necessary action to implement and administer the Plan in all its details. The Parties signatory to this Agreement further agree to be bound by the terms and conditions of the Trust Agreement as amended or extended, and by the administrative regulations of the Trustees in connection with the establishment or administration of the Fund, the methods and times of

making payments to the Fund, and the means of accounting therefor. It is further agreed that the contributions, while to be collected and paid over by the Contracting Stevedore, are the sole responsibility of the party ordering the Contracting Stevedore to perform the work (private or governmental) and the Contracting Stevedore is obligated to obtain signed agreement from the Party ordering the work that he will be bound by this contract. Should the Party ordering the Contracting Stevedore to perform the work fail to pay the established contributions, and notwithstanding the provisions of Clause 15-A, the men shall not be required to work for the defaulting Party ordering work by any Contracting Stevedore until the debt is paid in full.

(c) It is the intent of the Plan to insure that all men who have been employed for 700 or more hours under the Longshore or the Clerks and Checkers Agreement in 1975-76 shall be assured of an income of 1250 hours times the straight-time pay rate in the labor contract years 1977-78, 1978-79, 1979-80, and where supplementary pay is required W.V.P. assessments shall also be paid to these funds. When a man 65 or older becomes eligible for a pension he must decide within 6 months to either retire and receive a lump-sum settlement from the G.A.I. fund of $1,250,000 or to continue work with no further G.A.I. coverage. Should he subsequently wish to retire under the pension plan he could do so but would not receive the lump-sum settlement. The Trustees shall establish procedures for crediting hours to men who fail to qualify due to losing hours during the above periods because of injury at work, illness qualifying for benefits under the Wel-

fare Plan, service as Union Officials, or Military Service, if previously employed under the agreements. To finance the Plan the Parties ordering the Contracting Stevedore to work cargo vessels shall contribute, commencing 6-1-72, to the Fund, a tonnage assessment which the Trustees establish on their best estimate of the amount required for the year as related to the anticipated volume of cargo to be handled in these ports. This assessment will be identical in the amount at each port.

This assessment, when paid, is the total liability of the Parties. The assessment shall be recalculated by the Trustees as required, but any change in assessments shall not be retroactive.

For all time lost by persons included under the G.A.I. Plan, due to failure to work because of an I.L.A. strike and/or work stoppage or work stoppage resulting from strike or picketing activities of other persons or organizations not a party to this Agreement, the equivalent daily guaranty per work day 8:00 A.M.-5:00 P.M.—Monday through Friday will be deducted, per each individual so involved, from any G.A.I. Plan guaranteed hours which are due or may become due.

There shall be no hours guaranteed to any individual, qualified and registered under the G.A.I. Plan, from the time that a port becomes inoperable until operation resumes, in the event that work cannot be offered nor performed because of War, Natural Disasters such as hurricanes, earthquakes, etc., or disasters such as the "Texas City" disaster or ship disasters in stream which would render a port inoperable.

(d) Each port in the South Atlantic shall institute and maintain joint Union-Management hiring

procedures, subject to the approval of the District Trustees, including arrangement for the dispatching of men and gangs in such fashion as to assure a minimum liability to the Fund. The expenses of such personnel are to be borne by the Fund. Personnel entitled to G.A.I. will receive preference in hiring over non-G.A.I.-covered personnel.

(e) The effective date for commencing the necessary hiring procedures and providing for possible supplemental benefits shall be October 1, 1972. Payments of supplemental wages and W.P.V. assessments shall be made on a monthly basis. Payment of the first 25 hours per month is to be withheld until 125 hours have been accumulated in reserve to insure minimum unnecessary advance payments. This reserve shall be accounted for to the employee in the final month of the contract year. Over-payments to employees may be deducted as necessary from the employee's future salary.

(f) In establishing procedures at each port the following provisions shall be included, with details to be determined by Trustees:

(A) Employees shall be subject to multiple debiting in event of any of the following:

(1) Failure to be available and accept work for 8:00 A.M. or 1:00 P.M. starts on weekdays when any non-G.A.I.-covered personnel are employed.

(2) Failure to report to work after accepting employment.

(3) Leaving a job (unless injured).

(4) Failure to return after a break, such as a meal hour, when so ordered.

(B) Personnel shall lose all status and rights to a Guaranteed Annual Income under the following conditions:

(1) If they take steady employment requiring their presence between 8:00 A.M. and 5:00 P.M. any day of the week Monday through Friday.

(2) If they fraudulently qualify for or claim supplemental wages by such means as having other personnel check them in, check others in, etc.

(3) When a man accumulates any combination of 3 multiple debits he becomes ineligible for G.A.I. benefits for the 12 calendar months next following the date the third debit is applied.

(g) Should any provision of the "Guarteed Annual Income Plan" be in violation of Federal or State Law, should the Internal Revenue Service rule that assessments do not constitute a deductible business expense, the Plan shall be modified to enable the Plan to be in accord with existing laws.

3. (B) (4) In the event the ILA shall consider supplying labor to an Employer not a party to this Agreement at conditions which would depart from the provisions of this contract, the ILA shall first give advance notice of such intent to the Employers parties to this Agreement. Further, that such conditions for the particular work to be performed for an Employer not bound by the provisions of this Agreement shall also be made applicable to the Employer parties to this Agreement for the same type of work. The Employer likewise agrees

to give the ILA advance notice of any potential new business proposed to them which would or could result in a departure from this Agreement.

4. (A) The basic working day shall consist of 8 hours and the basic working week shall consist of 40 hours. Men shall work any night in the week, or on Saturdays, Sundays or holidays when required (except as provided in Clause 7 for work on New Year's Day, Independence Day, Labor Day and Christmas day). Except for holidays specified in Clause 7, straight-time rate shall be paid for any work performed from 8:00 A.M. to 12:00 Noon and from 1:00 P.M. to 5:00 P.M., Monday through Friday, inclusive. Work at all other times, including specified holidays, will be paid for at overtime rates, except as provided in Clause 7 for work on New Year's Day, Independence Day, Labor Day and Christmas Day and as provided in Clause 11 for work during meal hours.

4. (B) The work week will begin at 8:00 A.M. on Monday and will end at 8:00 A.M. on the following Monday. A Day is defined as the 24-hour period commencing at 12:01 A.M. and ending at 12:00 midnight.

5. (A) Differentials in accordance with Clause 5 (A) of Agreement with Local 1408, and the same rates shall be paid weighers, samplers, tallymen and checkers by this Agreement.

5. (B) (1) A differential of 20 cents per hour in straight time and 30 cents per hour in overtime will be added to the rates specified in Clause 3(A) for work performed in refrigerator compartments, refrigerator holds, refrigerator containers, refrigerator trucks or refrigerator cars whenever cargo is being handled that has been or will be carried at temperatures below 32 degrees Fahrenheit. When handling refrigerated cargo in conjunction with ice, the same differential will apply while handling such cargo and while handling the ice. These differentials will be paid to men assigned to checking the the hatch involved.

5. (B) (2) Men ordered for work on refrigerated cargo will be notified in advance in order that they may secure sufficient clothing. In the event men are not so notified prior to reporting for work that they will be handling cargo that has been or will be carried below 32 degrees Fahrenheit, they shall not be required to handle such cargo.

5. (C) (1) All personnel assigned to ships loading or discharging explosives or ammonium nitrate of a type requiring a U.S. Coast Guard Permit handled over or at explosive facilities, will be paid double the straight-time or overtime rate whichever is applicable) as specified in Clause 3(A). Small arms ammunition and firecrackers shall not be construed as explosives.

5. (C) (2) When men at other than explosive facilities such as Sunny Point or St. Mary's are working a vessel which contains explosives other than commodities such as small-arms ammunition or firecrackers, all men, including dockmen, working the vessel will be paid at double the straight-time or overtime rate (whichever is applicable) as specified in Clause 3(A).

5. (D) A differential of 50 cents per hour in straight time and 75 cents per hour in overtime will be added to the rates specified in Clause 3(A) for men actually working in the holds where equipment powered with internal combustion engines is in use. The provisions of this clause are waived when adequate blowers are in use. Adequate blowers shall meet the requirements of Paragraph 1504.93 of the Federal Safety and Health Regulations for Longshoring.

5. (E) None of the differentials provided above shall be paid unless the men are so employed for fifteen minutes or more of continuous work.

6. Men assigned to hatch handling cargo damaged by fire, water or oil where such damage causes unusual distress or obnoxious conditions, or where such damage

results in cargo being in unnatural form to the extent of causing unusual distress or obnoxious conditions shall be paid double the straight time or overtime rates specified in Clause 3(A).

Men assigned to hatches handling cargo where obnoxious odors are present and these obnoxious odors are not inrerent in the type of cargo shall be paid double the straight time or overtime rates specified in Clause 3(A).

Damaged cargo rates shall not be paid when sound cargo is handled from such compartments where the obnoxious conditions no longer prevail.

Damaged cargo rates shall not be paid for wet cargo if the cargo has dried out sufficiently so that no unusual distress is caused and no obnoxious conditions prevail.

7. (A) Holidays in accordance with those listed in Clause 7 of Agreement with Local No. 1408 will be observed.

When any of these holidays fall on Sunday, the following Monday shall be observed to the extent of paying overtime rates. No work will be performed on New Year's Day, Independence Day, Labor Day and Christmas Day, nor before 7:00 A.M. on the days following these holidays; nor after 3:00 P.M. on Christmas Eve or New Year's Eve, except on ships which can be finished by 5:00 P.M. and except in case of fire or where property is in danger. On Christmas Eve or New Year's Eve men working will be guaranteed six hours overtime pay unless they actually work after 3:00 P.M. to complete a vessel in which case they will be paid 8 hours overtime.

7. (B) When vessels are worked because of fire or where property is in danger on any of the four "no work" holidays, double the straight time rates as specified in Clause 3(A) will be paid. Where such work is under the conditions specified in Clause 6, double the overtime rates as specified in Clause 3(A) will be paid.

7. (C) On election day men must be released no later than 3:00 P.M. unless they start at 1:00 P.M. so they will have adequate time to vote.

8. (A) Regular starting times shall be 8:00 A.M., 1:00 P.M. and 7:00 P.M. On vessels which will be worked around the clock, men may be ordered for a 7:00 A.M. start on the second and subsequent days.

8. (B) All men for 7:00 A.M. through 1:00 P.M. starts must be ordered by 5:00 P.M. the previous day. Men for 7:00 P.M. starts must be ordered by 1:00 P.M. the same day. In the event weather or mechanical failure after 7:00 P.M. makes it impossible for night men to finish a ship scheduled to complete before 8:00 A.M., the night men may be released and ordered back from shipside for a subsequent daytime start for work on that ship only. Men ordered for 7:00 A.M. through 8:00 A.M. starts may be cancelled or modified by 5:00 P.M. the previous day. Men ordered for 1:00 P.M. starts may be cancelled or modified no later than 7:00 A.M. Men ordered for 7:00 P.M. starts may be cancelled no later than 4:00 P.M.

8. (C) (1) Men ordered to work shall be paid 8 hours at straight time or overtime rates, whichever is applicable as specified in Clause 3(A) provided they report and remain subject to call of the Employer during that time.

8. (C) (2) Men ordered for 7:00 A.M. starts shall be paid one hour overtime from 7:00 A.M. and the minimum shall be computed from 8:00 A.M. The minimum shall be computed from 8:00 A.M. for other daytime starts and from 7:00 P.M. for night starts.

8. (C) (3) When men are working during the daytime and report back after supper, they will receive no less than four hours pay for work after 7:00 P.M. When men are working during the evening and report back after midnight lunch, they shall receive no less than four

hours pay for work after midnight. When men report back after the breakfast hour, they shall receive no less than four hours pay for work after breakfast.

8. (D) The phrase "men ordered" as used herein is understood to apply only to new orders. It is not considered a new order when employment is interrupted solely due to meal period, the Savannah payday period, or when men are shifted between job classification or job locations by an employer. In the event men are not kept on the payroll but are released by an Employer and ordered back for a subsequent starting time it is considered a new order. For starts at 7:00 P.M. for which employers order new gangs of longshoremen, or for which replacement gangs are ordered, they shall also order the required clerks and checkers as a new order and guarantee.

8. (E) Any work remaininng to be done at 7:00 A.M. after men have worked through the night from 7:00 P.M. the previous evening shall normally be done by fresh men called out to start work at 7:00 A.M. as replacements for the night men. However, the night men shall continue to work beyond 7:00 A.M. whenever.

(a) Qualified fresh men are not available, or

(b) The work remaining to be done at 7:00 A.M. is less than two hours, or

(c) In the event rain or mechanical failure during the night prevents a vessel that would have completed with the night personnel from finishing, the Union agrees to furnish emergency personnel if the Employer places the order at or before 7:00 A.M.

9. Port Limits, for the purpose of this contract, are defined as the boundaries of limits extending from the St. Johns River jetties along both banks of the river to the Shands Bridge crossing at Green Cove Springs and shall include all areas within the boundary limits of Duval County, Florida.

10. Men shall be paid on a 30-minute basis and when they work five minutes or more of any 30-minute period, they shall be paid for the full 30 minutes.

11. (A) (1) The following hours are to be observed:

Breakfast	6:00 A.M. to 7:00 A.M.
Mid-Day Dinner	12:00 Noon to 1:00 P.M.
Supper	6:00 P.M. to 7:00 P.M.
Midnight Lunch	12:00 Midnight to 1:00 A.M.

11. (A) (2) On vessels working nothing but bulk cargo when night men are not to work beyond 7:00 A.M., or when day men are not to work beyond 7:00 P.M., the Breakfast or Supper hour will not apply.

11. (B) All meal hours when worked shall be paid for at double the overtime rates specified in Clause 3(A) except for the Mid-day Dinner hours on Monday through Fridays, holidays excepted; and for such Mid-day Dinner hours double the straight-time rates specified in Clause 3(A) shall be paid. Meal-hour pay is to be continued until men are released or meal hour is given.

11. (C) Employers will make arrangements to furnish drinking water in a sanitary manner to the men on the ship and on the dock. Ice water and sanitary cups will be supplied by the Employers.

11. (D) When personnel are to work after 7:00 P.M. they must be notified by 3:00 P.M., and such notification constitutes a firm order. In the event weather or mechanical failure occurs after 3:00 P.M. delaying the finish and the men do not wish to remain after 7:00 P.M., the Union must dispatch replacement personnel for 7:00 P.M. if notified prior to 6:00 P.M.

12. (A) Payroll practices shall continue as per past procedures unless changed by mutual agreement of both parties.

12. (B) (1) Commencing October 1, 1968, the Employer agrees to deduct from the wages of the Employees

working under this Agreement National and District Union fees for each hour paid and local Union fees; provided, however, that there be first presented to the Employer an authorization in the form set forth below:

CHECK-OFF AUTHORIZATION

To: Employers of Jacksonville Maritime Association and any other Employer with I.L.A. Contracts.

I hereby assign to the International Longshoremen's Association, AFL-CIO and hereby direct my Employer to deduct from the wages received by me by reason of my employment under the collective bargaining agreements with the ILA and its subordinate Local No. 1593 as Service Fees the sum of 1 per cent per straight time base rate hour National and District Service fees for each hour paid to me and 5 per cent of my gross pay as local service fees, and to pay this sum directly to the ILA and the Local. This assignment shall remain in effect during the term of the present collective bargaining agreement unless revoked by written notice to the Employer, which notice is effective as to work performed for such Employer after receipt of said notice.

_____	_____
Date	Signature
_____	_____
Social Security Number	Witness

12. (B) (2) The Employer agrees to make monthly remittances of the amounts deducted from Employee's wages no later than the third Wednesday of each month for the preceding month, with that portion representing the National and District Union fees to be sent to International ILA Headquarters in New York and the balance of the Unions fees sent to the office of Local No. 1593.

Should an Employee revoke the authorization, the Employer further agrees to immediately notify Local No. 1593. Reasonable administrative expense of the Check-off may be borne by the ILA and the amount deducted from the remittance.

12. (B) (3) Local No. 1593 and the ILA agrees to defend, indemnify and save the Employers harmless against and from all claims, demands, suits or other forms of liability that arise out of or by reason of action taken or not taken by the Employer in reliance upon or compliance with any provision of this Clause No. 12.

13. (A) (1) The work covered by this Agreement is understood to include the tallying, clerking, checking, weighing, booking (cargo spotting at Sunny Point only), sampling of cargo, assorting of cargo discharged from a vessel, stripping and stuffing of Containers, checking Containers and Barges when being loaded or discharged from the vessel; handled at the time of or in connection with performing Longshore work as defined in Clause 13 of the current Longshore Labor Agreement. It shall also include time-keeping duties except when men employed as supervisory employees are engaged in time-keeping duties along with supervisory duties, directions of clerks and checkers by the Chief Clerk as directed by management, clerking on passenger ships, and field clerks on automated container vessels.

13. (A) (2) CONTAINER AGREEMENT

J.M.A. and the Carriers recognize the existing work jurisdiction of ILA employees covered by their agreements with the ILA over all container work which historically has been performed by longshoremen and all other ILA crafts at container waterfront facilities. Carriers, direct employers and their agents covered by such agreements agree to employ employees covered by their agreements to perform such work which includes but is not limited to:

(a) the loading and discharging of containers on and off ships

(b) the receipt of cargo

(c) the delivery of cargo

(d) the loading and discharging of cargo into and out of containers

(e) the maintenance and repair of containers

(f) the inspection of containers at waterfront facilities (TIR men).

J.M.A., the Carriers, the direct employers and their agents shall not contract out any work covered by this agreement. Any violations of this provision shall be considered a breach of this agreement.

J.M.A. and the Carriers agree that the payment of container royalties as provided in their agreement is of of the essence to this agreement and, if for any reason during the term of this agreement such payments cannot be made in their present form, then J.M.A. and the Carriers shall provide, by some other form of assessment, for payment of equivalent amounts to be used for the the same purpose as said contained royalties are presently used.

J.M.A., the Carriers and ILA agree that the legal fight in defense of the Rules on Containers shall continue with full vigor. It is fully understood that nothing contained in any agreement shall be construed in any way as any waiver by the ILA of its position that the Rules on Containers are valid work preservation rules. Pending such legal appeals, the Rules in said contracts shall be enforced to the extent permitted by law. If the present joint appeals on the Rules on Containers are successful and the Rules are held to be valid when the Rules shall be enforced in all ports covered by this Agreement.

RULES

The following provisions are intended to protect and preserve the work jurisdiction of longshoremen and all other crafts which was performed at deep-sea waterfront facilities by labor covered under the terms and conditions of the Deep-Sea-ILA Agreements. These rules do not have any effect on work which historically was not performed at a waterfront facility by such labor. To assure compliance with the collective bargaining provisions, the following rules and regulations shall be applied uniformly in the Port of Jacksonville to all import or export cargo in containers:

(a) Loading a Container—Means the act of placing cargo into a container.

(b) Discharging a Container—Means the act of removing cargo from a container.

(c) Loading Containers on a vessel—Means the act of placing containers aboard a vessel.

(d) Discharging Containers from a vessel—Means the act of removing containers from a vessel.

(e) Waterfront facility—Means a pier or dock where vessels are normally worked including a container compound operated by a carrier or direct employer.

(f) Qualified Shipper—Means the manufacturer or seller having a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the export cargo being transported and who is named in the dock/cargo receipt.

(g) Qualified Consignee—Means the purchaser or one who otherwise has a proprietary financial interest (other than in the transportation or physical consolidation or deconsolidation) in the import cargo

being transported and who is named in the delivery order.

(h) Consolidated Container Load—Means a container load of cargo where such cargo belongs to more than one shipper on export cargo or one consignee on import cargo.

RULE 1—CONTAINERS TO BE LOADED OR DISCHARGED BY DEEP-SEA LABOR

(a) Cargo in containers referred to below shall be loaded into or discharged out of containers only at a waterfront facility by deep-sea labor under the terms and conditions of this agreement.

(1) Containers owned, leased or used by carriers (including containers on wheels and trailers), hereinafter "containers", which contain consolidated container loads, which come from or go to any point within a geographic area of any South Atlantic port described by a 50 mile circle with its radius extending out from the center of each port, (hereinafter "geographic area") or

(2) Containers which come from a single shipper which is not the manufacturer ("manufacturer's label") into which the cargo has been loaded (consolidated) by other than its own employees and such containers come from any point within the "geographic area", or

(3) Containers designated for a single consignee from which the cargo is discharged (deconsolidated) by other than its own employees within the "geographic area" and which is not warehoused in accordance with Rule 2(B).

(b) Such labor shall be paid and employed at deepsea longshore rates under the terms and conditions of the

deepsea labor agreement in the port of Jacksonville including the provisions for all fringe benefits and any and all other benefits receivable by deepsea workers in each such Port. No cargo shall be loaded into a container at the waterfront facility by deepsea labor more than once.

(c) All export consolidated cargo, described in 1(a)(1) and (2) above, shall be received at the waterfront facility by deep-sea labor and such cargo shall be loaded into a container at the waterfront facility for loading aboard ship.

(d) All import consolidated cargo, described in 1(a)(1) and (3) above, shall be discharged from the container and the cargo placed on the waterfront facility where it will be delivered and picked up by each consignees.

(e) No carrier or direct employer shall supply its containers to any consolidator or deconsolidator. No carrier or direct employer shall operate a facility in violation of the Rules on Containers which specifically require that all Rule 1 containers be loaded or discharged at a waterfront facility.

RULE 2—CONTAINERS NOT TO BE LOADED OR DISCHARGED BY DEEP-SEA LABOR

Cargo in containers referred to below shall not be loaded or discharged by deep-sea labor employed under the terms and conditions of this agreement:

(A) Export Cargo

(1) All cargo loaded in containers outside the "geographic area".

(2) Containers loaded with cargo at a qualified shipper's facility with its own employees.

(3) Containers loaded with the cargo of a single manufacturer (manufacturer's label) at its facilities with its own employees.

(4) Consolidated container loads of mail, household effects of a person who is relocating his place of residence, with no other type of cargo in the container, or personal effects of military personnel.

(5) There shall be no general warehouse exception applicable to export cargo.

(B) Import Cargo

(1) All cargo discharged from containers outside the "geographic area".

(2) Containers discharged at a qualified consignee's facility by its own employees.

(3) Consolidated container loads of mail, household effects of a person who is relocating his place of business with no other type of cargo in the container, or personal effects of military personnel.

(4) Containers of a qualified consignee discharged at a bona fide public warehouse within the "geographic area" which comply with all of the following conditions:

1. The container cargo is warehoused at a bona fide public warehouse.

2. The qualified consignee pays the normal labor charges in and out; and the normal warehouse storage fees for a minimum period of thirty or more days; and stores the cargo for a minimum period of 30 days; and

3. The cargo is being warehoused (a) in the normal course of the business of the qualified consignee; (b) title to such goods has not been transferred from the qualified consignee to another.

The carrier on request will furnish all documentation and other information which permits the Container Committee in the port to determine whether conditions 1, 2, and 3 have been met.

This exception shall not apply where cargo is warehoused for the purpose of avoidance of evasion of Rule 1. It is limited to containers warehoused as provided in the above conditions and any warehouse which does not conform to such conditions shall be deemed a consolidator or deconsolidator.

RULE 3—BATCHING

When an employer-member or carrier uses a trucker to remove or deliver containers in batches, or in substantial number, from or to a terminal to another place of rest (outside of its terminal) where containers are stored pending their delivery to a consignee (or after being received from a shipper and while waiting the arrival of a ship), for the purpose of reducing the work jurisdiction of the labor employed under this agreement, such use is deemed to be batching and an evasion of these Rules in violation of the Jacksonville Maritime Association-ILA Contract.

RULE 4—HEADLOAD

Where a single qualified shipper sends an export container which contains all of his own cargo to a waterfront facility and such container is not full, the carrier or direct employer may load this container with additional cargo at the waterfront facility. On import cargo, the carrier or direct employer may discharge any such additional cargo and send the remaining cargo in the container to the qualified consignee. The loading or discharging of cargo at the Port of Jacksonville shall be performed at a waterfront facility by deep-sea labor employed under the terms and conditions of this agreement.

RULE 5—OVERLAND MOVEMENT OF CONTAINERS FROM THE PORT OF JACKSONVILLE TO ANOTHER PORT

If a carrier moves containers from the Port of Jacksonville to another port for the purpose of evading the Rules on Containers, the carrier is in violation of this Agreement. If the cargo is being moved to another port in the normal course of business, and not for the purpose of evasion, then such movement is not a violation.

RULE 6—IMPORTERS ADVERTISING EVASION OF RULES

The circulation, in writing, by importers, of methods developed by them to evade the Rules on Containers by issuing single bills of lading on what are in fact consolidated container loads shall be deemed a violation and all Container Committees shall be advised to stop such evasion at the waterfront facilities.

RULE 7—NO AVOIDANCE OR EVASION

The above rules are intended to be fairly and reasonably applied by the parties. To obtain non-discriminatory and fair implementation of the above, the following principles shall apply:

(a) Geographic Area—Agreement in the Port to the geographic area as provided in Rule 1 is based on present consolidated movement patterns in the port. Should any person, firm or corporation for the purpose of evading the provisions of the Rules on Containers, seek to change such patterns by shifting its operations to, or commencing new operations at, a point outside said agreed-upon geographic area, then either party may raise the question whether said point should be included within the said geographic area, and upon agreement that the purpose of the shift in its operations was to evade the provisions of the Rules on Containers, then said point shall

be deemed to be within the said geographic area for the purpose of these rules.

(b) Containers Owned, Leased or Used—Containers owned, leased or used by companies which are affiliated either directly or through a holding company with a carrier or a direct employer shall be deemed to be containers owned, leased or used by a carrier or direct employer. Affiliation shall include subsidiaries and/or affiliates which are effectively controlled by the carrier or direct employer, its parent, or stockholders of either of them.

(c) Liquidated Damages—Failure to load or discharge a container as required under these rules will be considered a violation of the contract between the parties. Use of improper, fictitious or incorrect documentation to evade the provisions of Rule 1 and Rule 2 shall also be considered a violation of the contract. If for any reason a container is no longer at the waterfront facility at which it should have been loaded or discharged under the Rules, then the carrier or its agent or direct employer shall pay, to the joint Container Royalty Fund, liquidated damages of $1,000 per container which should have been loaded or discharged. If any carrier does not pay liquidated damages within 30 days after exhausting its right to appeal the imposition of liquidated damages to the Committe provided in Rule 9(a) below, the ILA shall have the right to stop working such carrier's containers until such damages are paid.

(d) Any facility operated in violation of the Container Rules will not have service supplied to it by any direct employer and the ILA will not supply labor to such facility.

RULE 8—

If any article, section, paragraph, clause or phrase of this Agreement shall, by any state, Federal or other

law, or by any decision of any Court or Administrative Agency, be declared or held illegal, void or unenforceable, the entire Agreement shall terminate upon sixty (60) days written notice to the other party hereto and the parties agree to enter into negotiations in an attempt to renegotiate that provision of the Agreement which was nullified. If no agreement is reached within the sixty (60) day notice period, the ILA shall have the right to strike and J.M.A. shall have the right to refuse to hire employees under this Agreement. The negotiations referred to above shall, under no condition, be subject to the grievance or arbitration provisions of the agreement, or of any Local Agreement.

RULE 9—ENFORCEMENT OF THE RULES ON CONTAINERS

To assure effective, fair and non-discriminatory enforcement of the above Rules, the following regulations shall apply:

(a) A Committee represented equally by management and union shall be formed and shall have the responsibility and power to hear and pass judgment on any violations of these Rules. Any inability to agree shall be processed as a grievance under the applicable contract except as limited by Rule 8 hereof. A joint committee known as the South Atlantic District Container Committee, represented equally by management and labor and made up in accordance with Clause 15(C) shall meet at least quarterly each year for the purpose of insuring uniformity in the interpretation of these rules.

(b) A committee of carriers, together with this South Atlantic District Container Committee, will develop uniform documentation which shall be required to be prepared and maintained by all

carriers in order to readily identify all Rule 1 containers which are subject to loading or discharging by deep-sea labor. It shall be the obligation of employer-members to clearly mark container's documentation as to whether or not it is a Rule 1 container, which shall be loaded or discharged. If a container's documentation is not clearly marked, it shall be deemed a Rule 1 container and it shall be loaded or discharged by deep-sea labor at the waterfront facility. With respect to all containers received at or delivered from the waterfront facility, a record of same shall be made by Checkers or Clerks. All carriers will distribute to all other carriers any and all information and devices which are being used by any person to circumvent the rules on Containers. Any carrier whose attention is brought to a violation of the Rules shall immediately cease such violation and report the matter to the appropriate Container Committee and to the policing agency provided in (e) below in its port.

(c) Every import container destined to a point within 50 miles of a South Atlantic Port shall be delivered only on a delivery order. Every export container coming from a point within 50 miles of a South Atlantic Port shall be received only on a dock/cargo receipt. Such delivery orders and dock/cargo receipts shall certify the place of delivery and origin of the container, the name or names of the person to whom the cargo is being delivered and from which it is shipped, the identity of the owner of the cargo, weight of the cargo, identity of the cargo and the origin and final destination of the container. Copies of such delivery orders and dock/cargo receipts shall be available to the local port Container Committee and the policing agency provided for in (e) below.

(d) The Container Committee in each Port shall promulgate to all carriers and direct employers, and to the Container Committee in each Port, any and all interpretations of the Rules on Containers as and when they are made. This will include uniform interpretations as and when they are issued. The District Container Committee shall also promulgate uniform interpretations to local port Container Committees, as and when they are issued.

(e) Policing Agent—Each Port shall establish a method of policing and enforcing these Rules on a uniform and non-discriminatory basis. No such method shall be implemented until presented to and approved by the District Container Committee.

(f) Council of Container Carriers—There shall be organized promptly a Council of Container Carriers composed of representatives of major container carriers who, with the Employer Negotiating Committee shall meet with the ILA at all regular and special meetings of the South Atlantic District Container Committee, and who shall participate in the discussion and resolution of problems and interpretations of the Container Rules discussed at the said meetings.

(g) Powers of the South Atlantic District Container Committee—In order to permit the fair and non-discriminatory application of the Rules and to encourage the movement of cargo in all South Atlantic ports, the South Atlantic Container Committee is hereby empowered to make such amendments or modifications to these Rules as may be necessary to the equitable application of the principles of these Rules to particular cases. The South Atlantic District Container Committee shall be guided by the rules, resolutions and interpretations of the

CONASA-ILA Container Committee when considering similar problems in the South Atlantic District.

RULE 10—CONTAINER ROYALTY PAYMENTS

The Container Royalty Payments required by the collective bargaining agreements shall be payable only once in the Continental United States. They shall be paid in that Port where the container is first handled by longshore labor at longshore rates. The second container royalty payment (provided by paragraph 3(B)(1) of this agreement shall be continued and shall be used for fringe benefit purposes only, other than supplemental cash benefits, which purposes are to be determined in accordance with that paragraph. Containers originating at a foreign port which are transshipped at a United States port for ultimate destination to another foreign port ("foreign sea-to-foreign-sea containers") are exempt from the payment of container royalties. Container royalty payments shall be assessed against all containers moving across the continental United States by rail or truck under the foreign-foreign "LAND BRIDGE" system. The said royalty payments shall become due for all such containers moving through South Atlantic ports on and after July 1, 1975.

RULE 11

With regard to the container royalties detailed in 3(B)(1) of the Longshore Agreement the following form is to be filled out by all companies. Payment is to be made only when all of the following conditions are applicable:

(a) On the contents of containers 19 feet or larger loaded to or unloaded from vessels engaged in deep-sea offshore trade.

(b) For containers stuffed or stripped by employees not covered by the Longshore Agreement.

(c) On gross tons of 2240 pounds weight, applied only to the contents of each container.

(d) On containers at first port of loading outbound or at last port of discharge inbound. Royalties are not payable on containers shifted or transshipped at intermediate ports.

THIS FORM TO BE FILLED OUT BY ALL EMPLOYERS OF LONGSHOREMEN. PAYMENT MUST BE MADE ONLY WHEN ALL OF THE FOLLOWING CONDITIONS ARE APPLICABLE:

(a) On the contents of containers nineteen (19) feet or larger loaded to or unloaded from vessels engaged in deep-sea offshore trade.

(b) For containers stuffed or stripped by Employees not covered by the Longshore Agreement.

(c) On gross tons of 2240 lbs. weight, applied only to the contents of each container.

(d) On containers at first port of loading outbound or at last port of discharge inbound. Royalties are not payable on containers shifted or transshipped at intermediate ports.

IF NO CONTAINERS ARE HANDLED THAT FALL WITHIN THIS CATEGORY OR IF CONTAINERS HANDLED ARE EMPTY, EACH EMPLOYER MUST SUBMIT A COPY OF THIS REPORT EACH MONTH, SHOWING "NONE" IN THE APPROPRIATE COLUMN.

PAYMENT CONTAINER ROYALTY

Company _____ Date of Filing _____

_____ For the Month of _____, 19____

_____ Wharf _____

No. of Containers	Gross Tons (2240 lbs.) Contained Therein		Amount
_____	_____	_____	_____
		at 35c per ton (Conv. ships)	_____
_____	_____	at 70c per ton (Partially automated ships, as defined in longshore contract)	_____
_____	_____	at $1.00 per ton (Fully automated ships, as defined in longshore contract)	_____
_____	_____	TOTAL	_____

ENCLOSED

Check No. _____ Dated _____ On The _____
(Bank)

(Mail check payable to) _____
(Signature)

_____
(Title)

RULE 12—EXECUTION OF AGREEMENT

All carriers utilizing labor employed under the term and conditions of the South Atlantic Deep Sea, ILA agreements shall be bound by the rules on containers contained in the agreements and the ILA shall not be required to supply labor to carriers failing to execute such agreement.

13. (A) (3) LASH AGREEMENT

This agreement made and entered into by and between the carrier and direct employer members of the J.M.A. and the International Longshoremen's Association, AFL-CIO ("ILA"), its Atlantic Coast District ("ACD") and its affiliated local unions in Jacksonville covers all LASH work at a waterfront facility which includes but is not limited to the receiving and delivery of cargo, the loading and discharging of said cargo into and out of barges, the maintenance of barges at a waterfront facility, except where shipyard maintenance is required and the loading and discharging of barges on and off LASH and SEABEE ships.

JMA and the Carriers agree that they will not directly perform work done on a waterfront facility or contract out such work which historically and regularly has been and currently is performed by employees covered by JMA-ILA Agreements, unless such work on such waterfront facility is performed by employees covered by JMA-ILA Agreements. The word "agreement" as hereafter used, shall refer to all JMA-ILA agreements.

J.M.A., the Carriers and I.L.A. agree that the following terms and conditions shall be applicable in all Jacksonville ports as follows:

(a) All LASH and SEABEE ships shall be loaded and unloaded exclusively by longshore labor, checked by deepsea checkers, maintained by the cooper,

carpenter and maintenance locals, all of whom are employed under the terms of this agreement at a waterfront facility (meaning a pier or dock, marshalling area, roadstead or other facility or location where LASH vessels are normally and usually loaded and discharged). All barges shall be loaded and unloaded by longshore labor, employed under terms of this agreement. The employer shall use the gang system in the loading and unloading of the barges.

(b) The gang shall consist of the following men when working:

STEEL AND OTHER HEAVY CARGO
11 deep-sea longshoremen plus a deep-sea checker and a foreman

GENERAL CARGO
14 deep-sea longshoremen plus a deep-sea checker and a foreman

(c) The gang shall work at a unit, a gang shall work only one lighter at a time, the gang cannot be broken up so it can work two or more lighters at one time. The gang shall move from lighter to lighter as a gang unit.

(d) The employer shall employ two gangs consisting of 18-men each plus any additional machine operators which are needed in the loading and unloading of the LASH and SEABEE ship.

(e) LASH and SEABEE barges may be loaded or discharged with non-ILA labor only at plants where the stevedoring function has not been performed in the past by longshore labor. Such plant must be one where only one type of various commodities are loaded and discharged, where the plant is operated by a single manufacturer or

processor and where longshore labor may not be used at the waterfront facilities of such plant because of labor agreements with other labor unions. LASH and SEABEE barges loaded or discharged at military facilities shall be subject to the same rules as are applicable to containers loaded or discharged at such facilities. The ILA shall be given a list of LASH and SEABEE barges so worked monthly and a royalty of $2.00 per gross ton of cargo shall be paid in the port where such LASH and SEABEE barge is loaded on or discharged from the LASH and SEABEE vessel. No royalty shall be paid on barge loads of bulk cargoes such as grain, fertilizers, chemicals, scrap metals, waste materials, or other cargoes not subject to load or count. $1.00 of said royalty payment shall be used exclusively for supplemental cash payments to employees covered by the J.M.A.-I.L.A. Agreement, and for no other purpose. The second dollar of LASH Royalty shall be used for fringe benefit purposes only, other than supplemental cash benefits, which are to be determined by the local Trustees. J.M.A. and the Carriers agree that the payment of LASH royalties as provided in their agreements is of the essence to this agreement and, if for any reason during the term of this agreement such payments cannot be made in their present form, then J.M.A. and the Carriers shall provide, by some other form of assessment for the payment of equivalent amounts to be used for the same purposes as said LASH royalty is presently used.

(f) All consolidated barge loads will be loaded or discharged at the pier by employees employed under this agreement out of the barge in which the cargo arrived at the pier. All consolidated cargo for

barges shall be received and delivered at the piers by deep-sea labor.

13. (B) It is understood and agreed that the Employer has the right to use in job classifications A and B in Clause 3(A) salaried shipside clerks, salaried timekeepers, salaried Receiving Clerks and salaried Delivery Clerks provided any such men at the time are regular, full-time employees of one Employer and are employed primarily to perform one or more of these jobs. Each Employer party to this Agreement hereby agrees that during the life of this Agreement he will not use in the future more salaried men in job classification A and B than he is presently using, and that when any present employees in these classifications leave his employ, they will not be replaced except by personnel employed under the terms and conditions of this agreement.

13. (C) Each Employer reserves the right to choose his employees by name from among the men available and qualified. Without in any way restricting this right, each Employer agrees to divide his work as fairly as possible among the men whom he considers qualified and who work regularly for him.

13. (D) There shall be no interference with Employer's right to designate the number of men, if any, to be employed, nor the Employer's right to shift men from hatch to hatch, ship to ship, dock to ship or ship to dock. A Chief Clerk must be employed whenever two or more Clerks or Checkers are working a ship. An hourly Timekeeper must be employed under the terms and conditions of this Agreement and the pay scale designated in Clause 3 (A) (2) on fully automated container ships, and when using more than one gang on break bulk general cargo ships, lash ships and lash barges containing break bulk cargo, and one clerk shall be employed on passenger ships and utilized as needed, provided his pay is in accordance with paragraph 3 (A) (2) and is based on the highest

skill performed. A checker is to be assigned to each gang handling miscellaneous general cargo, woodpulp, discharging lumber or discharging automobiles from conventional vessels, and to each gang loading or unloading cargo to or from containers (stuffing or stripping) when required at container terminals. Two checkers are to be used when discharging autos from Roll-on/Roll-off vessels. On other than miscellaneous general cargo, each employer will continue to use the number of checkers he formerly customarily used. The Employer also reserves the right to hire and discharge. It is recognized that the Employer has the right to utilize men in the combination of job classifications for which they are qualified, providing that they receive the pay rate of the highest job classification in which they are employed during their work shift.

13. (E) Neither party shall uphold incompetency, the use of narcotics and/or drugs other than those under prescription, shirking of work, insubordination, intoxication at work, the use of abusive language, pilfering or broaching of cargo, or the possession of firearms on the premises by other than security personnel. Personnel guilty of these offenses shall be dealt with as the circumstances require, and in the event a man is convicted of theft, he shall be denied any further employment in the industry. It is also understood and agreed that continued inaccuracy in his work or failure to report, after accepting orders, is sufficient ground for Employer's refusal to hire any man.

13. (F) The Management of the Employer's business and the direction of the work forces in the operation of its business are exclusively vested in the Employer as functions of management. Except as specifically provided in this Agreement, all of the rights, powers, and authority Employer had prior to signing of this Agreement are retained by Employer.

14. Seniority rules shall be decided and enforced on a local basis.

15. (A) During the term of this Agreement, the Employer agrees that there shall be no lockouts of the members of the Union, and Union agrees that there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interruption or stoppage, total or partial, of the Employer's operation for any cause whatsoever; such causes including but not limited to unfair labor practices by the Employer or violations of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. The Union shall not be financially responsible for strikes or walkouts not authorized or assented to by the Union.

15. (B) Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall, no later than forty-eight hours after such discussions, be referred in writing covering the entire grievance to a Port Grievance Committee composed of one member from a company not involved in the dispute, the Port Employer member of the Joint Negotiating Committee, the Port Union member of the Joint Negotiating Committee, and a Union member not involved in the previous attempts to settle the dispute. In the event this Port Grievance Committee cannot reach agreement within five (5) days after receipt of the complaint, the written record of the dispute shall be referred to the Joint Negotiating Committee, which will function as a District Grievance Committee on the following basis:

There must be present at the Grievance Committee meeetings at least three Regular Employer members and three regular Union members, in addition to the members from the Port originating the dispute as these latter members may participate in the discussion but may not vote. Each side shall have four votes, and if the fifth member of their side is absent he shall authorize his vote to be cast by one of the voting members in attendance.

This Grievance Committee shall meet at least quarterly, and in the case of urgent matters it shall make every effort to meet as soon as possible.

A majority decision of this Committee shall be final and binding on both parties and on all Employers signing this Agreement. In the event the Committee is unable to reach a majority decision within seventy-two (72) hours after meeting to discuss the case, it shall employ a professional arbitrator whose expenses and fees as well as those of any expert witness required by the arbitrator are to be borne jointly by the Management and Union of the Port concerned. Should the Committee be unable to agree on the selection of an arbitrator, they shall request the assistance of the Federal Mediation and Conciliation Service in designating a suitable arbitrator. Expenses of the Employer members of the District Grievance Committee are to be borne by the Port Employers, and of the Union members of the District Grievance Committee by the I.L.A.

In the selection of an arbitrator, thought will be given to a person who is knowledgeable and familiar with the problems of the Longshore Industry.

Any decision in favor of an Employee involving monetary aspects or discharge shall require the Employer involved to make financial restitution from the time of the complaint concerned, whereas decisions involving working methods or interpretations shall take effect seventy-two (72) hours after being rendered.

15. (C) The above mentioned Joint Negotiating Committee shall consist of an Employer's side of five members, one each from Wilmington, North Carolina; Charleston, South Carolina; Savannah, Georgia; Jacksonville, Florida; and Tampa, Florida; and a Union side of one ILA representative from each of these ports.

Each Employer vacancy shall be filled by the Port with the vacancy, and each Union vacancy by the Southeastern Dock and Marine Council of the ILA.

15. (D) The Joint Negotiating Committee upon written request of any Employer signatory to this Agreement or any Local covered by this Agreement shall determine whether new commodities or new types of packing present hazards or discomforts in handling which make it necessary to add such items to now existing penalty classifications. Such decisions shall be final and binding on all signatories to this Agreement, but where no majority decision is reached by the Committee, this shall constitute a denial of such addition.

15. (E) It is understood and agreed that there will be no changes made in this Agreement except by mutual consent in writing and with the full knowledge of all members of the Joint Negotiating Committee. All interpretations of this Agreement will be made in accordance with the provisions of Clause 15.

15. (F) The Union agrees that this Agreement is intended to cover all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement, the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this Agreement. Anything not contained in this Agreement shall not be construed as being part of this Agreement.

16. Both parties agree to cooperate with all efforts to provide safe working conditions including such efforts of the United States Department of Labor and all Port-wide Longshore Safety Councils and Company safety programs. Where neither such Councils nor such company programs now exist, the parties shall cooperate in establishing one or the other, with meetings to take place at least quarterly.

The requirements of the Occupational Safety and Health Administration shall be binding on both parties. All personnel reporting for work must be dressed so that no additional hazard is created and must wear safety shoes.

17. J.M.A. agrees to participate in the J.S.P. Program in order to preserve the job security of clerks and checkers. The J.M.A. further agrees that Clause 15(a)(1) shall not apply in the event a carrier does not subscribe to the J.S.P. agreement and the ILA elects to refuse to work for that carrier.

18. It is the intention and purpose of all parties hereto that no provision or part of this Agreement shall be violative of any Federal or State law.

19. Past practices and Port policies of previous Agreement are to be continued.

For the International Longshoremen's Association	For the Jacksonville Maritime Association
R. B. Keith	C. H. McCarthy, Jr.
President, Local 1593	President
Walter M. Ashley	V. McDaniel, Jr.
Business Agent, Local 1593	Labor Negotiator

Jacksonville Maritime Association represented the following listed employer members in signing this collective bargaining agreement:

Caldwell Shipping Co.
Eller & Co.
Gulf Terminal International
Harrington & Co.
Kaufmann Shipping Co.
McGiffin & Co.
South Atlantic Terminals, Inc.
Southeastern Maritime Co.
Southern Carolina Stevedoring Co.
Stevens Shipping Co.
Strachan Shipping Co.

EXHIBIT B

S.P.A. LABOR AGREEMENT

THIS IS AN AGREEMENT between the INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCALS #1408 and #1408-A (jointly the "I.L.A.") and JACKSONVILLE BULK TERMINALS, INC., ("J.B.T."), governing the unloading from rail tank cars of Superphosphoric Acid ("SPA") and the subsequent loading of SPA aboard vessels for shipment by water.

BACKGROUND AND PURPOSE:

SPA is a liquid product which must be maintained at all times at a temperature of not less than 150° F. Under normal conditions, the SPA which is produced and shipped by Occidental Chemical Company, will arrive at J.B.T. in a 48-car unit train. The train must operate on a thirty-two (32) hour turnaround, with only six (6) hours allowed for unloading at J.B.T. Efficient unloading is essential to the entire SPA operation. Accordingly, it is necessary for the protection of the cargo that the trains be unloaded immediately upon arrival, without regard to the time of day or night, the day of the week, or whether it arrives on holidays or "no-work" holidays. Shiploading, likewise, which will consist of positioning loading arms over each vessel's manifold, must be accomplished without delay.

The Longshoremen's Agreement and Warehouse Agreement between the Jacksonville Maritime Association and the ILA, which became effective October 1, 1977 (the Primary Contracts) do not expressly cover the operations in question. Moreover, they do not address certain of the special problems presented by the peculiarities of the operation. Therefore, it is recognized that this Agreement is necessary, notwithstanding the provisions of paragraph 15(E) and 15(F) of the current Longshore-

men's Agreement, and paragraphs 19 and 20 of the current Warehouse Agreement.

AGREEMENT:

In consideration of the mutual benefits to be gained by the parties, and the mutual promises made in this document, the parties hereto agree, as follows:

1. J.B.T. recognizes the ILA as the Collective Bargaining Representative of the two shiploading gangmen and the two warehouse gangmen who will perform the work described below, and their back-ups. In view of the fact that only two-man gangs are needed, Headers will not be required for the SPA operations only.

1. (a) Except where in conflict with this Agreement, the provisions of the Primary Contracts shall apply. It is understood that this includes any accrued retroactive wages resulting from and agreed to in connection with any future renewals of the Primary Contracts.

2. In recognition of the unusual and unique means of transporting the liquid SPA to, and receiving it at the Terminal facilities, and because of the unit train concept of its arrival being scheduled on a thirty-two (32) hour cycle by the railroad, the two (2) warehouse gangmen assigned for car unloading operations may be ordered for a start any hour of the day or night, and on Saturdays, Sundays and holidays, including the (4) "no-work" holidays, at the applicable wage rates specified in the Primary Contract, except as provided herein. They will be ordered through the Union Hall during its regular business hours, but may be ordered by contacting the President, Vice-President, Business Agent or Dispatcher of the local ILA at their homes after Union Hall business hours, on week nights or on Saturdays, Sundays or holidays (including "no-work" holidays), upon not less than ten (10) hours notice as necessary to assure labor on hand upon arrival of the unit trains. In the case of

warehouse men working SPA cars only, they may be ordered for starting times at any hour of the day or night, including weekends, holidays and "no-work" holidays, and shall be paid no less than the eight (8) hour minimum at the applicable straight time or overtime rates for week days, weekends and holidays, with running time thereafter, and shall be paid from the starting time ordered.

2. (a) Starting times and wage rates for the two (2) longshore shiploading gangmen shall be in accordance with the provisions of the Primary Contract, and include the applicable eight (8) hour minimum, except that such starting times shall also include work on the four (4) "no-work" holidays.

2. (b) In the case of a requirement for work by the two (2) warehouse gangmen on SPA cars, or work by the two (2) longshore shiploading gangmen on one of the four (4) "no-work" holidays, double their applicable overtime rates shall be paid for any work performed on such days between 12:01 A.M. and 12 MIDNIGHT of the day constituting the "no-work" holiday, and the applicable overtime rate shall apply for any work performed after midnight of the "no-work" holiday. In any event, the eight (8) hour minimums shall apply for any work performed on such days.

3. Due to the training to be provided, and the special protective clothing to be supplied to both the two (2) warehouse gangmen and the two (2) shiploading gangmen, the same men will be provided by the Union for the arrival of each train and/or ship. The Employer agrees to train and provide protective clothing for two (2) additional warehouse gangmen and two (2) additional shiploading gangmen as back-ups. In the event one of the regular warehouse or shiploading gangmen is unable to report, one of the appropriately trained back-up men will be made available as a qualified replacement.

4. Notwithstanding any provisions of the Primary Contracts to the contrary, due to the particular nature of the product to be handled, once operations have started for the unloading of cars into tanks, or once pumping has commenced from tanks to vessels, such operations shall not be suspended or interrupted due to any provisions, expressed or implied, by the Primary Contracts or this Agreement. In case of injury or illness, back-up men will be supplied as soon as possible, while pumping shall be allowed to continue uninterrupted. In such case, the back-up man's time will start when he reports for work, but in any event he will be guaranteed his eight (8) hour minimum at the applicable rate. In such event, however, the ten (10) hour ordering requirement for the back-up man will be waived.

5. Again, in recognition of the need, at all times, for maintaining the correct temperature of the material to be handled, and in consonance with the requirement and intent of paragraph four, and other operating requirements, pumping from cars to tanks, or tanks to ship cannot be suspended during normal specified meal hours, or midnight breaks. Accordingly, in lieu of meal hour penalty pay, men will be given a full uninterrupted meal hour between 6:00 a.m. and 8:00 a.m., 12:00 noon and 2:00 p.m., 6:00 p.m. and 8:00 p.m., and midnight and 2:00 a.m., at a time between those hours when connecting or disconnecting car unloading arms or shiploading arms is not required. It is understood that pumping operations will continue during the meal hours.

6. Men working on election day, whose starting times and knock-off times would prevent adequate time for voting, will be excused, one at a time, for not more than two (2) hours, with pay, for voting purposes only. Pumping of SPA from cars to tanks or tanks to vessel shall be permitted to continue during such absences.

Men will be excused for Union elections requiring attendance of the entire membership. The absence of ILA

men on such occasions will not be permitted to delay the discharge of SPA from rail cars to tanks or the pumping from tanks to vessel.

7. This Agreement, which becomes effective on the 4th day of October, 1979, shall continue in effect for the duration of the Primary Contracts, and any extensions thereof, and shall automatically renew with the execution of any future new Primary Contracts, unless rescinded, in writing, by either party not more than 120 days, nor less than 90 days prior to the expiration of the Primary Contracts then in effect. However, it is understood and agreed that continuation of this Agreement shall automatically include any adjustments of wage rates, overtime, hourly minimums, GAI, WPV and all other fringe benefits provided by any new Primary Contracts.

EXECUTED AT JACKSONVILLE, DUVAL COUNTY, FLORIDA, on the 4th day of October, A.D., 1979.

FOR THE I.L.A.	FOR JACKSONVILLE BULK TERMINALS, INC.
/s/ [Illegible]	/s/ [Illegible]

APPROVED FOR THE JACKSONVILLE MARITIME ASSOCIATION, INC.

By: /s/ [Illegible]

Date of Approval: Oct. 4, 1979

Witness: /s/ [Illegible]

Witness: /s/ [Illegible]

Witness: Gerard B. Fox, Vice-President, JMA

IV OTHER PARTS OF THE RECORD

COURT EXHIBIT NO. 1

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

January 30, 1980

The Honorable Benjamin R. Civiletti
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

I am advised that an action was filed this week in the United States District Court for the Middle District of Florida challenging the refusal of an International Longshoremen's Association local to load superphosphoric acid destined for the U.S.S.R. I am advised further that the judge has asked the U.S. Attorney to advise the court as to any United States interest in the matter. As the Secretary of Commerce is charged with the administration of controls over exports from the United States under the Export Administration Act of 1979 (to be codified at 50 U.S.C. App. §§ 2400 et seq.), I am providing you with information which I believe should be brought to the attention of the court.

There is no current prohibition against the export from the United States to the U.S.S.R. of super phosphoric acid under the export control laws and regulations. Exports to the Soviet Union of superphosphoric acid (and many other commodities) are currently under what is called general license authorization, which means that

the export can be made without application to or approval from the Department of Commerce. The export of certain other commodities to the Soviet Union requires a validated license. Exports of high technology and strategic items have been controlled under validated license procedures for many years. On January 7, 1980, pursuant to Presidential directive the Department of Commerce subjected the export of agricultural commodities to validated license procedures and barred exports of wheat and corn in excess of the eight million metric tons committed under the U.S.-Soviet Grains Agreement.

On January 8, 1980, the President of the United States directed the Secretary of Commerce to conduct a review of United States policy with respect to exports to the Soviet Union and in connection with that review to determine whether certain transactions now under general license status should be subject to validated license requirements. That review is proceeding quickly. The Secretary of Commerce has stated that consideration will be given to subjecting phosphates (including superphosphoric acid) to an export limitation or ban under the validated licensing procedure. This issue remains unresolved.

The Department of Commerce takes no position as to the merits of the action pending in the District Court in Florida, but I do believe that the Court and the parties to this proceeding should take note of the fact that appropriate governmental action has been taken and will be taken with respect to exports to the Soviet Union to protect the interests of the United States, and that private actions by longshore workers to interfere with such exports are not warranted. The review in progress will address the relationship of these exports to the national security, foreign policy and economic interests of the United States in a careful and coordinated manner, giving effect to the applicable provisions of United States

law. The President has already directed action to suspend certain exports pending completion of the policy review, but he has not deemed it necessary or appropriate to extend such an interim action to phosphates or to the many other commodities which may still be lawfully exported to the Soviet Union without a validated license.

I enclose copies of the relevant Presidential directives and Department of Commerce notices and regulations.

Sincerely,

/s/ Cecil Hunt
CECIL HUNT
Assistant General Counsel
for International Trade

THE WHITE HOUSE

January 7, 1980

MEMORANDUM FOR THE SECRETARY OF COMMERCE

I hereby direct that you, in consultation with the Secretary of Agriculture and other appropriate officials, take immediate action under the Export Administration Act to terminate shipments of agricultural commodities and products, including wheat and corn, to the Soviet Union. Export licenses should be granted, however, to the extent necessary to permit shipments to continue up to the 8,000,000 metric tons of wheat and corn per year covered by Article 1 of the 1975 Agreement between the United States and the Soviet Union on the Supply of Grain. I am taking this action in the national security and foreign policy interests of the United States. I have determined in accordance with the Export Administration Act that the absence of controls would be detrimental to those interests and that alternative courses of action would not comparably advance them.

/s/ Jimmy Carter

THE WHITE HOUSE

January 8, 1980

MEMORANDUM FOR THE SECRETARY OF COMMERCE

SUBJECT: Policy on Technology Transfers to the USSR

I direct that you, in consultation with the Secretary of Defense and other appropriate officials, review and revise our policy with respect to the export of high technology and other strategic items to the Soviet Union. Pending review, no validated export licenses for shipment of goods or technical data to the Soviet Union are to be approved. This review is to reassess what exports will make a significant contribution to the military potential of the Soviet Union and therefore prove detrimental to the security of the United States in light of the Soviet intervention in Afghanistan.

In addition, I direct that you immediately review those transactions for which validated licenses have already been issued but export has not occurred to determine whether any such licenses should be suspended or revoked in light of the changed national security circumstances.

Finally, I direct that you, in consultation with the Secretary of State and other appropriate officials, determine whether certain transactions now under general license requirements should be subject to validated license requirements.

/s/ Jimmy Carter

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THE WHITE HOUSE

Washington

January 9, 1980

MEMORANDUM FOR THE SECRETARY OF COMMERCE

SUBJECT: Policy on Technology Transfers to the USSR

I direct that you immediately suspend all existing specific export licenses to the Soviet Union and freeze all shipments under these licenses pending prompt review of whether these licenses should be indefinitely suspended or revoked in light of the changed national security circumstances. It is important that this review and resulting decisions be made with the utmost urgency.

/s/ Jimmy Carter

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 390

Suspension of Outstanding Validated Licenses and Other Authorizations for Shipments to the U.S.S.R. and Notice of Suspension of New Licensing.

AGENCY: Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This issuance announces a General Order of The Department of Commerce r nending immediately all outstanding validated export ı. es and other specific authorizations heretofore iss. l for shipments to the U.S.S.R. pending a prompt review of U.S. licensing policy in light of change national security circumstances. Furthermore, this issuance provides notice that, with the exception of licenses for certain agricultural commodities, no new licenses or other authorizations for export to the U.S.S.R. will be issued by the Department of Commerce pending such review.

DATES: These rules are effective 12 noon EST, January 11, 1980. Comments must be received by the Department by March 11, 1980. However, these regulations may be revised before the close of the comment period.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Room 1617M, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-5247 or 377-4811.)

SUPPLEMENTARY INFORMATION:

Regulatory Changes

At the direction of the President, the Department of Commerce is undertaking a prompt review of exports to the U.S.S.R. in light of the Soviet intervention in Afghanistan and changed national security circumstances. This rule announces a General Order suspending all validated licenses and other authorizations for exports and reexports to the U.S.S.R., as described below, pursuant to pertinent provisions of the Export Administration Regulations (15 CFR 372.9(9)(4) and 374.8). This suspension is to continue in effect only so long as the Department of Commerce deems necessary to complete appropriate review. This review is proceeding with the utmost urgency.

Effective 12 noon EST January 11, 1980, the Department of Commerce is suspending all outstanding validated licenses issued on or before January 11, 1980, for exports of goods or technology to the U.S.S.R. Except as provided in the Saving Clause below, as of the effective date and time, no further shipments to the U.S.S.R. may be made against such validated licenses, unless reauthorized by the Department of Commerce subsequent to January 11, 1980. In addition, the Department is suspending all reexport authorizations (15 CFR Part 374), parts and components authorizations (15 CFR 376.12), and special bulk licenses (15 CFR Part 373) issued on or before January 11, 1980, for shipment of any commodities or transfer of technical data (15 CFR Part 379) to the U.S.S.R. Except as provided in the

Saving Clause below, as of the effective date and time, no further shipments to the U.S.S.R. may be made against such authorizations or special bulk licenses unless reauthorized by the Department of Commerce subsequent to January 11, 1980. With regard to the special bulk licenses, these are suspended only to the extent that they authorize shipments to the U.S.S.R. Use of these special bulk licenses for shipments to other destinations is not affected by this action.

Any party in possession of a validated license or other authorization suspended by the Order is required to return such license or authorization to the Office of Export Administration. Special bulk licenses need not be returned, but cannot be used for shipments to the U.S.S.R. without further authorization.

The Order is not applicable to agricultural commodities and products which were made subject to validated license requirements by the notice published in the Federal Register on January 9, 1980 (45 FR 1883). Shipments which existing regulations permit to be made under general license are not affected by this General Order and may continue to be made under such authority.

Shipments of any affected commodity or technical data previously authorized for shipment to the U.S.S.R. by a validated license or authorization, as described above, that were on dock, on lighter, laden aboard an exporting carrier, or in transit to a port of exit pursuant to actual orders or export prior to 12 noon EST January 11, 1980 may be exported under that validated license or authorization up to 12 noon EST January 13, 1980. Any such shipment not exported before 12 noon EST January 13, 1980 may not be shipped to the U.S.S.R. without further authorization from the Office of Export Administration.

Notice to Exporters

At the further direction of the President, the Department of Commerce has suspended the issuance of new validated licenses and other authorizations for export to the U.S.S.R. pending review and revision of U.S. policy with respect to exports to the U.S.S.R. in light of the Soviet intervention in Afghanistan. This review will include certain transactions currently permitted under general license to determine whether they should be made subject to validated licenses. However, no changes in the general license provisions of the Export Administration Regulations are being made at this time.

Accordingly, exporters are placed on notice that the issuance of validated licenses and the approval of other requests for export or reexport authorization for shipments to the U.S.S.R. are suspended pending review and revision of U.S. policy.

Excepted are licenses which may be issued for the export of wheat or corn as provided in the Federal Register notice published on January 9, 1980 (45 FR 1883). This suspension affects validated export license applications, parts and components applications, special bulk licenses (to the extent they would authorize exports to the U.S.S.R.) and reexport requests which are currently pending, as well as any new applications or requests hereafter filed. This will serve as notice to exporters as to the reason for the delay in the processing of their validated export license applications or other requests.

Rulemaking Requirements:

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 et seq.) (the "Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function

of the United States, it has also been determined that these regulations are not subject to Department of Commerce Administrative Order 218-7 (44 FR 2082 et seq., January 9, 1979) and the Industry and Trade Administration Administrative Instruction 1-6 (44 FR 2093 et seq., January 9, 1979) which implement Executive Order 12044 (43 FR 12661 et seq., March 23, 1978), "Improving Government Regulations."

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing any final regulations. Under section 9.06 of Administrative Order 218-7 the Department is required to provide a comment period of at least sixty days. However, these regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close on March 11, 1980. No comments received after the close of the comment period will be accepted or considered by the Department in the development of any final regulations which may be issued. Business data which any party desires to submit in confidence shall be submitted on separate sheets bearing at the top of each sheet the clear legend "Confidential Business Information." By submitting data identified as "Confidential Business Information," the petitioner or other party represents that the information is exempted from public disclosure, either by the Freedom of Information Act or by a specific statutory exemption. Any request for confidential treatment must be accompanied at the time of filing by a statement justifying nondisclosure and referring to the specific legal authority claimed. However, the Office of

Export Administration may refuse to accept as "confidential" any information which is not intended to be protected under the law. Any information which the Office of Export Administration refuses to accept as "confidential" and returns to the commenter may be submitted as nonconfidential, or may be withdrawn and will not be considered.

All public comments to be considered in any revision to these regulations, except those submitted on a confidential basis as described above, will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Governments or foreign government will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

Accordingly, The Export Administration Regulations (15 CFR Part 368 *et seq.*) are amended by establishing a new § 390.6 to read as follows:

§ 390.6 General order suspending validated licenses and other authorizations for exports to the U.S.S.R.

(a) *Suspension of validated licenses and authorizations.* Effective 12 noon EST January 11, 1980, all validated licenses, reexport authorizations, and parts and components authorizations for shipment of any commodities or transfer of any technical data to the Union of Soviet Socialist Republics (U.S.S.R.) are suspended. This suspension includes shipments under special bulk licenses, described in Part 373, to the extent they authorize shipment of commodities to the U.S.S.R. Except as described in the Saving Clause, no exports or reexports may be made against such suspended licenses or authorizations without further approval from the Office of Export Administration. This order does not affect any agricultural commodities or products made subject to validated licensing pursuant to § 376.5 of these regulations.

(b) *Saving Clause.* Shipments of any commodity or technical data previously authorized for shipment to the U.S.S.R. by a validated license or authorization, as described in paragraph (a) of this section, that were on dock, on lighter, laden aboard an exporting carrier, or in transit to a port of exit pursuant to actual orders for export prior to 12 noon EST January 11, 1980 may be exported under that validated license or authorization up to 12 noon EST January 13, 1980. Any such shipment not exported before 12 noon EST January 13, 1980 may not be shipped to the U.S.S.R. without further authorization from the Office of Export Administration.

(c) Any party in possession of a validated license of authorization suspended by this General Order shall, within 15 days of the effective date, return such license or other authorization, along with any amendments thereto, to Richard J. Isadore, Acting Director, Operations Division, Room 1617M, Office of Export Administration, International Trade Administration, U.S. Department of

Commerce, Washington, D.C. 20230, annotated on the reverse to indicate any shipments already made. Holders of special bulk licenses need not return them, but may make no shipments to the U.S.S.R. until such time as the Department of Commerce authorizes them to do so.

DRAFTING INFORMATION: The principal authors of these rules are Daniel E. Cook, Assistant to the Director, Policy Planning Division, Office of Export Administration, and Roman W. Sloniewsky, Deputy Assistant General Counsel for Domestic Commerce.

(Sec. 13, 15, and 21, Pub. L. 96-72, to be codified at (50 U.S.C. app. 2401 et seq.); Department Organization Order 10-3, dated January 3, 1980)

Dated: January 11, 1980.

Donald A. Furtado.

Acting Under Secretary for International Trade.

[FR Doc. 80-1380 Filed 1-11-80, 2:52 p.m.]

BILLING CODE 3510-25-14

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 376, 386, and 399

Restriction on the Export of Agricultural Commodities and Products to the U.S.S.R.

AGENCY: Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Interim rule.

SUMMARY: This issuance implements the President's determination to restrict exports of agricultural commodities and products to the U.S.S.R., in the interests of U.S. national security and foreign policy. The regulations prohibit the export and reexport from foreign countries of U.S. origin agricultural commodities to the U.S.S.R., with the exception of wheat and corn, exports of which will be permitted up to an aggregate of 8 million metric tons during the period October 1, 1979-September 30, 1980, which is the fourth year of the U.S.-U.S.S.R. grain agreement.

DATES: These rules are effective 11:59 p.m., EST, January 7, 1980. Comments must be received by the Department by March 7, 1980.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Room 1617 M, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Converse Hettinger, Director, Short Supply Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-3984.)

SUPPLEMENTARY INFORMATION:

Presidential Memorandum

On January 7, 1980 the President issued the following directive to the Secretary of Commerce:

> I hereby direct that you, in consultation with the Secretary or Agriculture and other appropriate officials, take immediate action under the Export Administration Act to terminate shipments of agricultural commodities and products, including wheat and corn, to the Soviet Union. Export licenses should be granted, however, to the extent necessary to permit shipments to continue up to the 8,000,000 metric tons of wheat and corn per year covered by Article I of the 1975 Agreement between the United States and the Soviet Union on the Supply of Grain. I am taking this action in the national security and foreign policy interests of the United States. I have determined in accordance with the Export Administration Act that the absence of controls would be detrimental to those interests and that alternative courses of action would not comparably advance them.

This issuance reflects the directives contained in the President's memorandum.

Regulatory Changes—Agriculture Commodities

Effective 11:59 PM EST January 7, 1980, the Department of Commerce is suspending the policy of permitting the use of General Licenses for the export from the United States of agricultural commodities and products (herein referred to as "agricultural commodities") to the U.S.S.R. and is requiring the issuance of validated licenses before such shipments may be made. In addition, as of the effective date and time, the reexport of U.S.-origin agricultural commodities from other countries to the U.S.S.R. is prohibited without prior written

authorization from the Office of Export Administration. The commodities made subject to validated licensing or reexport authorization by this issuance are listed in a new Supplement to Part 376 of the Export Administration Regulations. Exports of wheat and corn to the U.S.S.R. are made subject to an aggregate limitation of 8 million metric tons for the two commodities combined during the period October 1, 1979-September 30, 1980. No distinction is made between the treatment of wheat and corn. Exports and reexports of other agricultural commodities to the U.S.S.R. are prohibited. While a procedure is established for the consideration of applications to export or reexport to the U.S.S.R. other commodities made subject to validated licensing by this issuance such licenses and reexport authorizations will *not* be approved except where (1) it is established to the satisfaction of the Office of Export Administration, in consultation with the Department of Agriculture, that the commodities are not agricultural commodities and were erroneously classified as such in this issuance, (2) as of 11:59 PM EST January 7, 1980, loading of the agricultural commodities aboard an oceangoing exporting carrier had actually commenced or, (3) as of 11:59 PM EST January 7, 1980, the agricultural commodities were actually enroute to a port of export aboard a rail car or truck which would be the exporting carrier. Applications to export wheat and corn from the United States or to reexport U.S.-origin wheat and corn from another country to the U.S.S.R. during the period October 1, 1979-September 30, 1980 must be submitted so as to reach the Short Supply Division, Office of Export Administration no later than 5:00 PM EST January 14, 1980. Such applications may be hand carried to Room 1617A, Main Commerce Building, 14th and E Streets, NW., Washington, D.C. during normal business hours, or mailed to the Office of Export Administration, Attention: Short Supply Division, Post Office Box 7138, Ben

Franklin Station, Washington, D.C. 20044. Applications to export other commodities made subject to validated licensing under these regulations may be submitted at any time.

Saving Clause

Shipments of commodities for which the use of a General License is suspended by the regulations announced herein may continue to be made under the suspended General License authority provided either (1) their loading aboard an oceangoing exporting carrier had actually commenced prior to 11:59 PM EST January 7, 1980, or (2) as of 11:59 PM EST January 7, 1980, they were actually enroute to a port of export aboard a rail car or truck which would itself serve as the exporting carrier *And provided further*, That such shipments actually depart the United States or the foreign country from which they are being reexported within 48 hours thereafter. All such shipments for export which have not actually departed the United States as of 11:59 PM EST January 9, 1980 will require a validated license.

Rulemaking Requirements

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 et seq.) (the "Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function of the United States, it has also been determined that these regulations are not subject to Department of Commerce Administrative Order 218-7 (44 FR 2082 et seq., January 9, 1979) and the Industry and Trade Administration Administrative Instruction 1-6 (44 FR 2093 et seq., January 9, 1979) which implement Executive Order 12044 (43 FR 12661 et seq., March 23, 1978), "Improving Government Regulations."

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(a) of the Act, these regulations are issued in interim form and comments will be considered in developing the final regulations. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views. The period for submission of comments will close on March 7, 1980. No comments received after the close of the comment period will be accepted or considered by the Department in the development of the final regulations. Business data which any party desires to submit in confidence shall be submitted on separate sheets bearing at the top of each sheet the clear legend "Confidential Business Information." By submitting data identified as "Confidential Business Information," the petitioner or other party represents that the information is exempted from public disclosure, either by the Freedom of Information Act or by a specific statutory exemption. Any request for confidential treatment must be accompanied at the time of filing by a statement justifying nondisclosure and referring to the specific legal authority claimed. However, the Office of Export Administration may refuse to accept as "confidential" any information which clearly is not intended to be protected under the law. Any information which the Office of Export Administration refuses to accept as "confidential" and returns to the commenter may be submitted as nonconfidential, or may be withdrawn and will not be considered.

All public comments to be considered in any further revision to these regulations, except those submitted on a confidential basis as described above, will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by

written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address by calling (202) 377-3031.

Enforcement

Exporters are advised that the Department, in consultation with the Department of Agriculture, intends to monitor closely exports and reexports of agricultural commodities to other countries to assure that the actions announced herein are not subverted through indirect shipment to the U.S.S.R. Should it appear that such indirect shipments are taking place, the Department intends to announce such further measures as may be necessary to assure the effectiveness of the actions announced herein.

Exporters are placed on notice that any action taken by any person with regard to an export or reexport transaction subject to the Export Administration Regulations with the knowledge that violation has occurred, is about to occur, or is intended to occur, with respect to the

whole or any part of such transaction, is prohibited by the Regulations (15 CFR 387.4). Thus, a shipment of agricultural commodities made to a consignee in a country other than the U.S.S.R. with the knowledge that such shipment is intended to be diverted from the original destination to the U.S.S.R. would constitute a violation of the provisions of these regulations.

Exporters are further placed on notice that any violations of the regulations announced herein will be subject to the civil, criminal and administrative penalties authorized by Section 11 of the Export Administration Act of 1979 and the provisions of Section 387 of the Export Administration Regulations. Such sanctions may include suspension of export privileges, fines up to 5 times the value of the export of $100,000, whichever is greater, imprisonment for not more than 10 years, or all three. The Department intends to monitor carefully compliance with the provisions of these regulations and to enforce any detected violations vigorously.

Accordingly, the Export Administration Regulations are amended as follows:

PART 376—SPECIAL COMMODITY POLICIES

1. A new § 376.5 is established to read as follows:

§ 376.5 Exports or Reexports of Agricultural Commodities to the U.S.S.R.

(a) *Scope.* This subsection sets forth the policies and procedures applicable to exports and reexports to the U.S.S.R. of U.S.-origin agricultural commodities and products (hereinafter referred to as "agricultural commodities") to the U.S.S.R.

(b) *Wheat and Corn.* Applications for a validated license to export wheat or corn or requests for authorization to reexport U.S.-origin wheat or corn to the U.S.S.R.

will be considered by the Office of Export Administration up to an aggregate quantity of 8 million metric tons for both commodities combined during the period October 1, 1979-September 30, 1980: *Provided,* Such applications are accompanied by the appropriate documentation and submitted as specified below. Exporters will have until 5:00 PM EST January 14, 1980 to submit applications and affidavits, as described below, setting forth their contract positions and quantities already or in process of being shipped as of 11:59 PM EST January 7, 1980. Such quantities will first be aggregated and deducted from the overall 8 million metric ton total and the unshipped balance of the 8 million metric tons will then be allocated to individual exporters on the basis of their proportionate share of the aggregate quantity they had under contract for shipment during the period October 1, 1979 through September 30, 1980, less the total quantity already shipped against such contracts.

(c) *Other Agricultural Commodities.* No export licenses or reexport authorizations will be issued for a commodity listed in Supplement No. 1 to Part 376 except *when* (1) it is established to the satisfaction of the Office of Export Administration, in consultation with the Department of Agriculture, that the commodity is not an agricultural commodity and was erroneously included in the list of agricultural commodities contained in Supplement No. 1 to Part 376; or (2) it is established to the satisfaction of the Office of Export Administration that, as of 11:59 PM EST January 7, 1980, loading of the agricultural commodity aboard an oceangoing exporting carrier had actually commenced, or the agricultural commodity was enroute to a port of export via a truck or rail car which would be the exporting carrier. Applications which fall into either of these two categories will be considered for issuance by the Office of Export Administration if accompanied by the documentation required below.

(d) *Submission of Applications*—(1) *Wheat and Corn.* An application for a license to export or to reexport wheat or corn to the U.S.S.R. during the period October 1, 1979-September 30, 1980 must be submitted so as to actually reach the Short Supply Division, Office of Export Administration, no later than 5:00 PM EST January 14, 1980. No application received subsequent to this time and date will be considered.

(2) *Other Agricultural Commodities.* An application to export or to reexport to the U.S.S.R. a commodity listed in Supplement No. 1 Part 376 on the grounds that it is not an agricultural commodity or on the grounds that as of 11:59 PM EST January 7, 1980, its loading aboard an oceangoing exporting carrier had either actually commenced or that it was enroute to a port of export on a truck or rail car which would be the exporting carrier may be submitted at any time.

(3) *Method of Submission.* Applications filed under this section may be hand carried to Room 1617A, Main Commerce Building, 14th and E Streets, N.W., Washington, D.C. during normal business hours or mailed to the Office of Export Administration, Attention: Short Supply Division, Post Office Box 7138, Ben Franklin Station, Washington, D.C. 20044.

(e) *Documentation.* An application for a validated license to export an agricultural commodity from the United States to the U.S.S.R. must be submitted on Form ITA-622P, Application for Export License, and be accompanied by the documentation listed below. An application for an authorization to reexport to the U.S.S.R. a U.S.-origin agricultural commodity previously exported from the United States must be submitted on Form ITA-699P, Request to Dispose of Commodities or Technical Data Previously Exported, and be accompanied by the documentation listed below.

(1) *Wheat and Corn.* (i) A certified copy or a photocopy of the export sales contract calling for shipment during the period October 1, 1979-September 30, 1980, and

(ii) An affidavit signed by an authorized representative of the exporter stating (A) the aggregate quantity of U.S.-origin wheat and corn which, prior to January 4, 1980, the exporter had contracted to export or reexport to the U.S.S.R. during the period October 1, 1979-September 30, 1980, and had reported to the Department of Agriculture under that Department's export sales reporting program, (B) the aggregate quantity of all shipments made against those contracts prior to 11:59 PM EST, January 7, 1980 and (C) the aggregate quantity of wheat and corn whose loading aboard an oceangoing exporting carrier had actually commenced or which was enroute to a port of export on an exporting truck or rail car as of 11:59 PM January 7, 1980.

(2) All Other Agricultural Commodities Listed in Supplement No. 1 to Part 376.

(i) A certified copy or a photocopy of the export sales contract calling for shipment during the period October 1, 1979-September 30, 1980, and

(ii) An affidavit signed by an authorized representative of the exporter stating with particularity the precise location(s) and quantity(ies), of the commodities covered by the application for an export license or reexport authorization, and their stage of export loading or of export movement as of 11:59 PM EST January 7, 1980.

(f) *Validity period.* All licenses and reexport authorizations for wheat or corn issued under this section will expire April 30, 1980. Any other licenses which may be issued hereunder will expire as stated thereon.

(g) *Shipping Tolerance.* A shipping tolerance of 5 percent is allowed over the unshipped balance remaining on a validated export license or reexport authorization for the shipment of an agricultural commodity to the U.S.S.R. under the provisions of this section. (See also § 386.7 for a fuller discussion of shipping tolerance, including examples.)

(h) *Confidentiality.* Any documentation required and submitted under this section will be treated as confidential information under section 12(c) of the Export Administration Act of 1979.

(i) *Enforcement.* All persons are placed on notice that any violations of the provisions of this subsection or any other provisions of the Export Administration Regulations will be subject to the civil, criminal and administrative penalties authorized by section 11 of the Export Administration Act of 1979 and section 387 of the Export Administration Regulations. Such sanctions may include suspension of export privileges, fines up to five times the value of the exports involved or $100,000, whichever is greater, imprisonment for not more than ten years, or all three. All persons subject to the provisions of this section are further advised that the Office of Export Administration intends to monitor closely compliance with the provisions of this section.

2. A new Supplement No. 1 to Part 376 is established to read as follows:

Supplement No. 1 to Part 376 Agricultural Commodities and Products [1] SUBJECT TO VALIDATED LICENSING [2] TO THE U.S.S.R.

Schedule B No.	Commodity description
100.0220-193.2500.	Schedule 1. Animal and Vegetable Products
	Part 1. Live animals
	Part 2. Meats
	A. Bird meat
	B. Meats other than bird meat
	Part 3. Fish and shellfish
	A. Fish, fresh, chilled, or frozen
	B. Fish, dried, salted, pickeled, smoked, or kippered
	C. Fish in airtight containers
	D. Other fish products
	E. Shellfish
	Part 4. Dairy products, birds' eggs
	A. Milk and cream
	B. Butter and margarine
	C. Cheeses
	D. Other milk products
	E. Poultry and other birds' eggs
	Part 5. Hides, skins, and leather; furskins
	A. Hides, skins, and leather
	B. Furskins
	Part 6. Live plants, seeds
	A. Live plants
	B. Seeds
	Part 7. Cereal grains, milled grain products, and malts and starches
	A. Grains
	B. Milled grain products
	C. Malts and starches
	Part 8. Vegetables
	A. Vegetables, fresh, chilled, or frozen
	B. Vegetables, dried, desiccated, or dehydrated
	C. Vegetables, packed in salt, in brine, pickeled or otherwise prepared or preserved
	D. Mushrooms and truffles
	Part 9. Edible nuts and fruits
	A. Edible nuts
	B. Edible fruits
	C. Fruit flours, peels, pastes, pulps, jellies, jams, marmalades, and butters
	D. Glace nuts, fruits and other vegetable substances

Supplement No. 1 to Part 376 Agricultural Commodities and Products [1] SUBJECT TO VALIDATED LICENSING [2] TO THE U.S.S.R.—Continued

Schedule B No.	Commodity description
	Part 10. Sugar, cocoa; confectionery
	A. Sugars, syrups, and molasses
	B. Cocoa
	C. Confectionery
	Part 11. Coffee, tea, mate, and spices
	A. Coffee and coffee substitutes, tea, mate
	B. Spices and spice seeds
	Part 12. Beverages
	A. Fruit juices
	B. Non-alcoholic beverages
	C. Fermented alcoholic beverages
	D. Spirits, spiritous beverages and beverages and beverage preparations
	Part 13. Tobacco and tobacco products
	Part 14. Animal and vegetable oils, fats, and greases
	A. Oil-bearing vegetable materials
	B. Vegetable oils, crude or refined
	C. Animal oils, fats, and greases, crude or refined
	D. Hardened oils, fats and greases, mixtures
	Part 15. Other animal and vegetable products
	A. Edible preparations
	B. Animal feeds
	C. Feathers, downs, bristles and hair
	D. Shellac and other lacs; natural gums, gum resins, resins, and balsams; turpentine and rosin
	E. Miscellaneous animal products
	F. Miscellaneous vegetable products
200.3502-200.3586.	Schedule 2. Wood and Paper; Printed Matter
	Part 1. Wood and Wood Products
	A. Rough and Primary Wood Products
300.1030	Schedule 3. Textile Fibers and Textile Products
	Part 1. Textile Fibers and Wastes; yarns and threads
	A. Cotton
	B. Vegetable fibers, except cotton
	C. Wool and related animal hair
	D. Silk

[1] Commodity description, not Schedule B Number, determines the commodity subject to validate licensing.

[2] Applications to export and reexport the above to the U.S.S.R. will be considered in accordance with Part 376.5.

PART 386—EXPORT CLEARANCE

3. Section 386.7(a) is revised to read as follows:

§ 386.7 Shipping tolerance.

(a) *Increase in quantity.* A shipping tolerance of 10 percent is allowed over the unshipped balance of a commodity on a validated export license when the quantity specified for that commodity is in terms of weight or measures, *e.g.*, pound, barrel, foot, etc., *except* when (1) specifically limited by a note on the face of a validated export license (2) a smaller tolerance has been established for commodities under short supply control, i.e., as listed in a Supplement to Part 377, or (3) the license covers an agricultural commodity as listed in Supplement No. 1 to Part 376 which is destined to the U.S.S.R.

* * * *

PART 399—COMMODITY CONTROL LIST

4. The Commodity Control List incorporated by reference at § 399.1 is amended by including a new entry to read as follows:

Export control commodity number and commodity description.			
4994F Agricultural commodities, including animal and vegetable products, rough and primary wood products, textile fibers and wastes; yarns and threads as listed in Supplement No. 1 to Part 376			
Unit	Processing code	Validated license required	
(1)	SS	SZ and the U.S.S.R.	
GLV dollar value limits			
T	V	Q	
0	0	0	

[1]Report unit of quantity for each commodity as specified in Statistical Classification of Domestic and Foreign Commodities Exported from the United States, Schedule B.

* * * *

DRAFTING INFORMATION: The principal authors of these rules are Converse Hettinger, Director, Short Supply Division, Office of Export Administration, and Roman W. Sloniewsky, Deputy Assistant General Counsel for Domestic Commerce.

(Secs. 5, 6, Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 *et seq.*; Presidential Memorandum dated January 7, 1980; Department Organization Order 10-3, dated January 3, 1980.)

Dated: January 7, 1980.

Donald A. Furtado,

Acting Under Secretary for International Trade.

[FR Doc. 80-847 Filed 1-8-80; 9:05 am]

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Docket No. 80-1045

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JACKSONVILLE BULK TERMINALS, INC., HOOKER CHEMICAL CORPORATION and OCCIDENTAL PETROLEUM CORPORATION,

Petitioners,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Docket No. 80-1045

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JACKSONVILLE BULK TERMINALS, INC., HOOKER CHEMICAL CORPORATION and OCCIDENTAL PETROLEUM CORPORATION,

Petitioners,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents International Longshoremen's Association, AFL-CIO, and its affiliated locals and officers respectfully request that the Court deny the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit in this case. The opinion below is reported *sub nom New Orleans Steamship Association* v. *General Longshore Workers, ILA,* at 626 F.2d 455 (5th Cir. 1980) and is reproduced at Petition 1a *et seq.**

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* The appeal to the Fifth Circuit was consolidated with a case arising out of the ILA work stoppage in New Orleans, Louisiana. However, that case involved the scope of injunctions granted after an arbitrator's decision and is not germane here.

Statement of the Case

The petition arises from the Fifth Circuit's reversal and *vacatur* of a preliminary injunction granted by the District Court for the Middle District of Florida, Jacksonville Division, which enjoined respondents from refusing to load three ships named in the order because of a grievance concerning the shipment of cargo to the Soviet Union and which directed respondents to process any such grievance in accordance with the contractual grievance machinery of their collective bargaining agreement.

In response to the invasion of Afghanistan by the Soviet Union, Respondent International Longshoremen's Association, AFL-CIO ("ILA") adopted a resolution that its members would not handle any cargo bound to or coming from the Soviet Union. The resolution was generated by the overwhelming sentiment of the rank and file longshore union members, who wish to protest the act of naked agression and who in conscience would have no part in contributing, directly or indirectly, to the economic or military well-being of a nation now recognized as a serious threat to this country. The refusal to handle Soviet goods covers all ports on the East and Gulf Coasts. It was not motivated by any hope for economic gain or by any dispute with the various ILA employers.

Members of Respondent Local 1408, ILA, AFL-CIO ("Local 1408") are employed by Petitioner Jacksonville Bulk Terminals, Inc. ("J.B.T."), which maintains a bulk marine shipping terminal in the Port of Jacksonville, Florida. J.B.T. is a wholly owned subsidiary of Oxy Chemical Corporation ("Oxy"), which in turn is a subsidiary of Petitioner Hooker Chemical Corporation ("Hooker"). All three companies are owned by Petitioner Occidental Petro-

leum Corporation ("Occidental"). J.B.T. is a party to the collective bargaining agreement between the Jacksonville Maritime Association, Inc. and Locals 1408, 1408-A and 1593 of the ILA. The other corporations are not parties to the contract. J.B.T. is engaged in the loading of superphosphoric acid ("SPA") produced by Hooker onto ships destined for the Soviet Union from the Port of Jacksonville.

In addition to the clauses quoted at Petition pp. 3 and 4, the collective bargaining agreement between J.B.T. and Local 1408 provides in ¶15F:

> The Union agrees that this Agreement is intended to cover all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this Agreement. *Anything not contained in this Agreement shall not be construed as being part of this Agreement.* (emphasis supplied).

On January 15, 1980 a Norwegian vessel entered the port to take on SPA for transport to the Soviet Union. The members of Local 1408 refused to handle the cargo. At no time did Local 1408 refuse to handle any other cargo which was not proceeding to the Soviet Union.

J.B.T. filed a complaint in the district court seeking a temporary restraining order, preliminary injunction, permanent injunction, specific performance, and damages. A hearing was held on January 31, 1980 before Honorable Susan H. Black, United States District Judge, which resulted in the order appealed from.

Contrary to petitioners' present contention, the district court in its opinion, found (and the circuit court agreed) that there was no underlying dispute between petitioners and respondents (Petition, 32a). However, it held since the underlying dispute was not a "labor dispute," the prohibition of §4 of the Norris-LaGuardia Act was not applicable and granted the injunction.

In reliance upon this Court's holding in *Buffalo Forge Co.* v. *United Steelworkers of America, AFL-CIO*, 428 U.S. 397 (1976) (hereinafter *"Buffalo Forge"*), the Fifth Circuit held that respondents' underlying dispute with the Soviet Union could not be processed under the arbitration clause of the collective bargaining agreement, although the resulting dispute whether the unions' action in response to the non-arbitrable dispute violated the no-strike clause might be arbitrable. 626 F.2d at 467. The Fifth Circuit rejected the notion that the resulting, arbitrable dispute was not a labor dispute within the meaning of the Norris-LaGuardia Act, 626 F.2d at 465, and held that, under *Buffalo Forge*, no injunction could issue prior to a determination of the arbitrator. 626 F.2d at 467.

The Fifth Circuit vacated the preliminary injunction, reversed the order to arbitrate the underlying dispute and affirmed the district court's judgment insofar as it ordered the parties to submit to arbitration the question whether the work stoppage violated the no-strike clause. 626 F.2d at 469.

Petitioners now seek a Writ of Certiorari from this Court to review the Fifth Circuit's decision.

ARGUMENT

1. There Is No Conflict Among the Circuits Requiring Review By This Court.

The Fifth Circuit's understanding and application of *Buffalo Forge, supra,* is consistent with its own prior interpretation of that case, *Jacksonville Maritime Association, Inc.* v. *International Longshoremen's Association, AFL-CIO,* 571 F.2d 319, 325 (5th Cir. 1978) and with that of every other circuit which has addressed the subject. *NLRB* v. *C.K. Smith & Co.,* 569 F.2d 162 (1st Cir. 1977); *Latrobe Steel Co.* v. *United Steelworkers of America, AFL-CIO,* 545 F.2d 1336, 1341 (3d Cir. 1976); *Cedar Coal Co.* v. *United Mineworkers of America,* 560 F.2d 1153, 1169 (4th Cir. 1977); *Walker Bros. Stone Co.* v. *United Steelworkers of America, AFL-CIO,* 620 F.2d 132 (6th Cir. 1980); *NLRB* v. *Keller-Crescent Co.,* 538 F.2d 1291, 1295 (7th Cir. 1976). *J.A. Jones Construction Co.* v. *Plumbers and Pipefitters Local 598,* 568 F.2d 1292 (9th Cir. 1978). The Second and Eighth Circuits, too, would seem to have expressed a similar view. *Corporate Printing Co.* v. *New York Typographical Union Number 6,* 555 F.2d 18, 20 (2d Cir. 1977); *National Rejectors Industries* v. *United Steelworkers of America,* 562 F.2d 1069, 1075 (8th Cir. 1977).

Moreover, with respect to the precise situation of this case, the Fifth Circuit's decision is in perfect accord with that of the Fourth Circuit independently arrived at in another case arsing out of the same ILA work stoppage. *Hampton Roads Shipping Association* v. *International Longshoremen's Association, AFL-CIO,* 631 F.2d 282 (4th Cir. 1980).* The District Court for the Northern District of New York also came to the same conclusion. *John W.*

* A Petition for a Writ of Certiorari to the Fourth Circuit is presently pending. No. 80-1058.

McGrath Corporation v. *Atlantic Coast District ILA*, 80-CV-150 (N.D.N.Y.). (The court's unreported opinion is reproduced as an Appendix to the brief for respondents in opposition to Petition for a Writ of Certiorari to the Fourth Circuit in the *Hampton Roads Shipping Association* case, Docket No. 80-1058).

Thus, there is no conflict or confusion among the lower courts as to the meaning of *Buffalo Forge* or as to its applicability to the situation under review here.

In their effort to concoct a conflict among the circuits as to the applicability of § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, petitioners are forced to go far afield. The cases they rely on are readily distinguishable.

NLRB v. *International Longshoremen's Association, AFL-CIO*, 332 F.2d 992 (4th Cir. 1964) (*"Ocean Shipping"*) involved a secondary boycott proceeding. True, the Fourth Circuit held that the political dispute there was not a labor dispute within the meaning of § 2(9) of the National Labor Relations Act, 29 U.S.C. § 152(9) and denied enforcement of the NLRB's order. However, *Ocean Shipping* lacked the very element which is a labor dispute in the present case—a disagreement between the employer and the union as to whether the latter is contractually required to work in the circumstances of this case. The Fourth Circuit in *Hampton Roads Shipping Association* v. *ILA, supra*, found its earlier decision in *Ocean Shipping* no impediment to reaching the same result as the Fifth Circuit did in the case at bar.

Like *Ocean Shipping*, the Second Circuit's decision in *Khedivial Line* v. *Seafarers' International Union*, 278 F.2d 49 (2d Cir. 1960) long preceded *Buffalo Forge*. As with the Fourth Circuit, the Second Circuit found its earlier decision no obstruction to application of the bar of Norris-

LaGuardia to circumstances like those of the present case. *Buffalo Forge Co.* v. *United Steelworkers of America*, 517 F.2d 1207 (2d Cir. 1975). *Khedivial* involved picketing of ships of the United Arab Republic in support of a union's political dispute with Arab nations. The Arabian shipowners sought to enjoin the picketing as a common law tortious interference with business. In dictum, the Second Circuit remarked that Norris-LaGuardia would not apply, but denied the injunction on other grounds. As in *Ocean Shipping*, but unlike the case at bar, the unions' employers were not involved in the *Khedivial* case. The dispute was solely between the union and third parties and in each case the relief sought was solely to prohibit picketing, not to require the unions to perform work under their collective bargaining agreements.

The instant case is a suit under Labor-Management Relations Act § 301, 29 U.S.C. § 185 (LMRA), to enforce a labor agreement. Whether or not respondents' underlying dispute with the Soviet Union is a labor dispute is irrelevant. The second dispute over a possible violation of a no-strike clause *is* a labor dispute. Indeed it is hard to imagine anything more quintessentially a labor dispute than a disagreement between an employer and his employees over whether, under certain circumstances, they are required by their labor contract to work. Such a dispute manifestly goes to a term and condition of employment. Thus, however one may characterize the unions' grievance against the Soviet Union, a labor dispute is generated when an employer claims that the unions' actions in response to that grievance violate the employer's labor contract.

This characterization of the two disputes is borne out by the applicable statutes themselves. Federal jurisdiction over this case is invoked under LMRA §301—a suit for breach of a collective bargaining agreement. To the extent

that petitioners invoke federal jurisdiction because a labor contract is involved they themselves incur the prohibition of Norris-LaGuardia §4. No epistemological evaluation of the dispute is necessary. If a labor dispute is not involved, the Court has no jurisdiction and cannot grant an injunction. If a labor dispute is involved, Norris-LaGuardia applies and no injunction can issue.

This Court in *Buffalo Forge* addressed the very premise on which petitioners' rely, saying

> . . . Congress rejected the proposal that the Norris-LaGuardia Act's prohibition against labor dispute injunctions be lifted to the extent necessary to make injunctive remedies available in federal courts for the purpose of enforcing collective bargaining agreements. 428 U.S. at 409.

Petitioners' assertion, then, that the Fifth Circuit "recognized" that it was in conflict with other courts is simply not true.* The other cases dealt with disputes like the *underlying* dispute here, which may or may not involve a labor dispute. But the Fifth Circuit was dealing with the *resulting* dispute over the employer's claim of a violation of the no-strike clause, for which it invoked federal jurisdiction under LMRA §301.

There exists no conflict or confusion among the lower courts as to the applicability of the Norris-LaGuardia ban or the holding of *Buffalo Forge* to the kind of case presented here.

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* Petitioners' attempt to manufacture an internal inconsistency within the Fifth Circuit is equally specious. All the cases cited in fn. 6 at Petition p. 8 were decided before *Buffalo Forge*. The Fifth Circuit opted to follow its own "earlier and more fully expressed opinion." 626 F.2d at 465.

2. The Fifth Circuit Correctly Applied the Holding of *Buffalo Forge*.

The Fifth Circuit's decision in this case, paralleled by the Fourth Circuit's in *Hampton Roads Shipping Association* v. *International Longshoremen's Association, AFL-CIO, supra,* was an uncomplicated and direct application of the holding in *Buffalo Forge*. The underlying dispute between the ILA and the USSR is not a dispute with an ILA employer. "The Union has gone on strike not by reason of any dispute it or any of its members have with the employer, . . ." 428 U.S. at 404, 405. "[T]he strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract." 428 U.S. at 407. "[N]either its causes nor the issues underlying it was subject to the settlement procedures provided by the contracts between the employer and respondents." 428 U.S. 407, 408. "[T]he strike had neither the purpose nor effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain." 428 U.S. 408.

In these circumstances, the underlying dispute is clearly not arbitrable. The resultant dispute whether the union's action violates the express no-strike clause may be arbitrable, and the Fifth Circuit correctly ordered arbitration of that question. But, following the express holding of *Buffalo Forge,* 428 U.S. at 412, the circuit court held that no injunction could be granted prior to the arbitrator's ruling.

Petitioners' attempt to evade the dictates of *Buffalo Forge* by arbitrarily characterizing the union's work stoppage as an invasion of management rights is unavailing. The record shows that respondents have made no attempt to dictate to the employers. The ILA's concern in this

matter is solely its own participation in the Soviet enterprise. Whatever others may do, longshoremen do not wish themselves to service the aggressors. They have made no attempt to enlist the support of other unions, businesses, or the public, or their employers. The ILA does not punish anyone whose conscience is less sensitive. It does not refuse to handle the non-Soviet cargo even of companies like Occidental, who are notorious for trading with the Russions. It does not withhold services to its employers who continue to carry Russian goods, as long as longshoremen do not have to handle them. It does not even take reprisals against those employers who circumvent the ILA action by diverting vessels to foreign ports or to ports where the refusal to handle has been enjoined. *See, Baldovin* v. *International Longshoremen's Association, AFL-CIO,* 626 F.2d 445, 452 (5th Cir. 1980). Thus, to characterize this as a dispute between the union and the employers over management's rights would be a transparent fiction.

Management rights are being violated, if at all, only by the work stoppage and it is only the work stoppage petitioners sought to enjoin. Thus, it is really a violation of the no-strike clause which is complained of, even if the misleading label of "management rights" is invoked. The question would remain whether striking over a non-arbitrable dispute violates management rights. This is a matter of interpretation and construction of the contract, which the parties have agreed is for the arbitrator. This Court has expressly rejected the argument that a pre-arbitration injunction may be granted because one of the parties claims that some arbitrable provision of the contract is at issue. (*Buffalo Forge, supra,* 428 U.S. at 408, n. 10, 409)

It is readily apparent that what petitioners urge and what the Fifth Circuit refused to permit was a ruling that a preliminary injunction might be granted prior to arbitration, upon the Court's unilateral determination that the no-strike clause has been violated. This was what had been urged by the dissent in *Buffalo Forge* and what was rejected by the majority, 428 U.S. at 412, which recognized that it would deprive the Union of the benefits of the very arbitration clause that the employer was seeking to invoke.

3. Reconsideration of *Buffalo Forge* Is Unwarranted.

The decision in *Buffalo Forge* is sound and clearly understood by the lower courts. Petitioners' dissatisfaction stems not from any flaw in this Court's reasoning, but from their own desire to circumvent their agreement to submit disputes to arbitration rather than to the courts. Even while recognizing that the arbitration clause is the *quid pro quo* for an agreement not to strike, petitioners would deny the unions the right to have an arbitrator decide whether their action violates the no-strike clause while at the same time depriving them of the right to strike. Petitioners' position is really antithetical to the policy favoring arbitration. It would arrogate to the courts the threshold decision which the parties committed to the arbitrator. And such a policy, if accepted, would have the practical effect of inhibiting unions from including in their collective bargaining agreements the kind of broad arbitration and no-strike clauses the law favors.

Most damaging to petitioners' argument that the Fifth Circuit's decision deprives them of their bargain and eviscerates the presumption of arbitrability is the history of the case which was consolidated in the Fifth Circuit with the case herein. There, the New Orleans employers, con-

sistent with their contract and with *Buffalo Forge*, went immediately to arbitration. At the same time that petitioners were litigating over a preliminary injunction, the district and circuit courts enforced the arbitrators' rulings in favor of the New Orleans employers.

In short, it is not *Buffalo Forge* or the Fifth Circuit that deprives petitioners of any arbitration they were entitled to, but petitioners own precipitous application for a pre-arbitration injunction. Had they immediately sought arbitration, this matter would have been laid to rest long ago. Petitioners' discomfort in a situation of their own creation is no ground for this Court to review a thoroughly reasoned and well-understood decision not five years old.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION, AND
OCCIDENTAL PETROLEUM CORPORATION,
Petitioners

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a union-instigated work stoppage motivated by its political disapproval of an employer's international trade relationships involves or grows out of a "labor dispute" within the meaning of § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104.

2. Whether a federal district court has jurisdiction to enjoin a strike precipitated, at least in part, by a disagreement about the employer's authority to decide with whom it will do business, where the applicable collective bargaining agreement, containing a broad no-strike clause and a provision for mandatory and binding arbitration of all "matters under dispute" between the union and employer, expressly reserves to the employer complete control over the management of its business and direction of its work force.

3. Whether this Court should reconsider its decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), in light of its application by lower courts in situations that effectively deprive an employer of the benefit of the promise not to strike given by a union in return for the employer's commitment to arbitrate disputes between the parties.*

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* The following parties participated in the proceedings in the United States Court of Appeals for the Fifth Circuit: Jacksonville Bulk Terminals, Inc.; Hooker Chemical Corporation; Occidental Petroleum Corporation; International Longshoremen's Association; Local Union 1408, International Longshoremen's Association; Landon Williams, individually and as President of Local 1408; Melvin Andrews, individually and as Vice-President of Local 1408; Oliver Collins, individually and as Treasurer of Local 1408; Paul Fields, individually and as Business Agent of Local 1408; and all other members of Local 1408 of the International Longshoremen's Association, or of any other labor organization acting in concert with the named defendants.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION, AND
OCCIDENTAL PETROLEUM CORPORATION,
Petitioners

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 626 F.2d 455 and is reprinted at App., a 1-25, of the Appendix to the Petition herein. The opinion of the United States District Court for the Middle District of Florida, Jacksonville Division is not reported, and is reprinted at App., a 26-35, of the Appendix to the Petition herein.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment of the court of appeals was entered on September 25, 1980. The Petition herein was filed on December 24, 1980 and granted on March 30, 1981.

STATUTORY PROVISIONS INVOLVED

This case involves the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. § 101 *et seq.*, and § 301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. § 185. Pertinent provisions of the Norris-LaGuardia Act are set forth in their entirety at p. 2 of the Petition herein. Section 301(a) of the Labor Management Relations Act is set forth in its entirety at App., a 36 of the Petition herein.

STATEMENT OF THE CASE

Federal Jurisdiction

Petitioners, Jacksonville Bulk Terminals, Inc. ("JBT"), Hooker Chemical Corporation ("Hooker"), and Occidental Petroleum Corporation ("Occidental"), brought this action pursuant to § 301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. § 185(a) against the International Longshoremen's Association, an affiliated local union and its officers and agents (the "Union"), for injunctive and other relief, as a result of the Union's instigation of a work stoppage allegedly in violation of the provisions of an effective collective bargaining agreement between JBT and the Union (J.A. 2).[1]

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[1] References to the appendices to the Petition herein are designated as "App., a —." References to the Joint Appendix are designated "J.A. —."

plete control over the management of its business and the direction of its work force:

> The Management of the Employer's business and the direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically provided in the Agreement, all of the rights, powers and authority Employer had prior to signing of this Agreement are retained by Employer.

(J.A. 60).

On January 4, 1980, the President of the United States announced restrictions on certain trade with the Soviet Union in retaliation for that country's intervention in Afghanistan. Superphosphoric acid was not included in that Presidential embargo (J.A. 133).[3] The Union subsequently adopted a resolution urging its members to refuse to handle *any* cargo shipped to or from the Soviet Union (App., a 2-3). The Union acted upon this resolution by refusing to load three ships which arrived at JBT's Jacksonville terminal during the month of January, 1980, to receive SPA for transport to the Soviet Union.

In response to the Union's refusal to perform the work requested by JBT, Petitioners filed a complaint in the United States District Court for the Middle District of Florida, Jacksonville Division, pursuant to Section 301(a) of the Labor Management Relations Act, as amended, 29 U.S.C. § 185(a). Petitioners alleged that the continued work stoppage violated the collective bargaining agreement, and that both damages and injunctive relief were appropriate.

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[3] On February 25, 1980, the embargo was extended to include SPA along with other products (App., a 7-8). On April 24, 1981, President Reagan lifted the embargo on SPA, as part of his decision to remove restrictions on the sale of grain to the Soviets. *See* 46 Fed. Reg. 23923 (April 29, 1981).

The Proceedings Below

1. *The District Court*

On February 1, 1980, the district court granted the employer's request for injunctive relief, and issued a preliminary injunction restraining the Union from calling, instigating, directing, encouraging or participating in any strike or work stoppage relating to the three vessels then in the Port of Jacksonville. The district court further ordered that the parties arbitrate their dispute in accordance with the terms of the collective bargaining agreement (App., a 26-27, 35). In its written opinion, the district court found that the underlying dispute between the parties was a political one. Accordingly, the court reasoned that the work stoppage was not a "labor dispute" within the meaning of § 13(c) of the Norris-LaGuardia Act, and that the issuance of an injunction was not precluded by § 4 of that statute (App., a 32-33). The court then concluded that injunctive relief was warranted according to traditional equity principles (App., a 33-35).

2. *The Appeals Court*

The Court of Appeals for the Fifth Circuit vacated the preliminary injunction. Because it found that the Union's work stoppage did "involve or grow out of a labor dispute" for purposes of the Norris-LaGuardia Act, even though the strike was politically motivated, the court was obliged to consider further whether the requested injunctive relief was warranted under the rationale of this Court's decision in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970). The Fifth Circuit concluded that the *Boys Markets* exception to the Norris-LaGuardia Act was not applicable to this situation, because the underlying dispute precipitating the work stoppage was not arbitrable within the meaning of this Court's decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976) (App., a 21).

SUMMARY OF ARGUMENT

The Norris-LaGuardia Act limits the jurisdiction of federal courts in injunction actions growing out of a labor dispute. While that statute defines the term "labor dispute" broadly so as to encompass a wide range of disputes arising out of the employer-employee relationship, the legislative history of the Norris-LaGuardia Act as interpreted by this Court confirms that the Act is limited to situations in which the "employer-employee relationship [is] a matrix of the controversy." *Columbia River Packers* v. *Hinton*, 315 U.S. 143, 147 (1942). A clear thrust of judicial construction of the "labor dispute" provisions of the Norris-LaGuardia Act is that its anti-injunction prohibitions are limited to cases involving the "economic self-interest" of the union involved. *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line Railway Co.*, 362 F.2d 649-654 (5th Cir), *aff'd*, 385 U.S. 20 (1966).

The Fifth Circuit below thus incorrectly reversed the district court which had found the Norris-LaGuardia Act inapplicable to the instant controversy involving admittedly "purely political objectives." The district court properly followed existing precedent in holding that politically motivated union conduct is not within the scope of the Norris-LaGuardia Act; indeed, the Fifth Circuit's unarticulated conclusion that the Norris-LaGuardia Act applies is the only instance in which the Act has been held to extend to political conduct.

Not only is the result below unsupported by Norris-LaGuardia and its extensive judicial interpretation, the Fifth Circuit's decision disrupts the goals of federal labor policy. One of the primary goals of that policy is the encouragement of arbitration. This Court has recog-

nized that enforcement of collective bargaining agreements by both parties, as mandated by § 301 of the Labor Management Relations Act, 20 U.S.C. § 185, is fully consistent with that policy. *Boys Markets* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970). The Court has also recognized definite limits on the protection afforded by the federal labor laws to politically motivated union conduct. *Eastex Inc.* v. *NLRB*, 437 U.S. 556 (1978).

Federal labor policy cannot be read to permit Norris-LaGuardia to be used to insulate a union from its contractual responsibilities in a case completely alien to the concerns of the Act.

The appellate court's decision also permits serious interference with the Government's execution of American foreign policy. The union has demonstrated a pattern of instigating political protests directed at various international news events, in complete disregard of the impact such conduct can have upon this country's relationships with foreign nations. The limited scope of the Norris-LaGuardia Act certainly cannot be interpreted as authorizing this kind of political activity by permitting a union to disregard its pledge not to strike "for any reason whatsoever." An employer confronted with a political strike is left without recourse, according to the Fifth Circuit, despite any previously obtained no-strike pledge. Norris-LaGuardia should not be extended to political controversies to condone such a result.

The Fifth Circuit erroneously concluded both that Norris-LaGuardia was applicable and that injunctive relief was precluded by this Court's decisions in *Boys Markets* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) and *Buffalo Forge Co.* v. *Steelworkers*, 428 U.S. 397 (1976). Assuming that those cases apply to a

political controversy such as this one, pre-arbitration injunctive relief should not be denied nonetheless. The work stoppage issue here was prompted by an arbitrable dispute between the parties, relating to a disagreement over the employer's right to choose its customers as part of its exercise of management prerogatives. The management rights clause in the parties' collective bargaining agreement clearly is capable of such an interpretation. Accordingly, the appellate court below erroneously ignored the presumption of arbitrability, *see Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368 (1974), and this Court's admonition in *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S 574 (1960), that an order to arbitrate should not be denied unless it can be "said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." 363 U.S. at 582-83.

Buffalo Forge does not alter this result. The parties' underlying dispute is arbitrable within the Court's intended meaning of that notion, in that the union's political disapproval of the Soviet military action in Afghanistan cannot be separated from the union's disapproval of Occidental's decision to choose the Soviet Union as a business partner. As a result, the underlying dispute in this case plainly involves a question of contractual interpretation that should be resolved by an arbitrator.

Buffalo Forge has, however, caused considerable confusion among the lower courts, as the decision of the Fifth Circuit below indicates. A major part of the difficulty caused by *Buffalo Forge* has been the application by certain lower courts of an overly mechanical interpretation of the concept of coterminous interpretation of no-strike and arbitration clauses.

If the Fifth Circuit's interpretation of *Buffalo Forge* is approved by this Court, it is clear, especially in light of other recent cases, that an employer is left without any effective remedy to enforce a claim that there has been a violation of a valid no-strike clause. For example, *Complete Auto Transit Inc.* v. *Reis*, 49 U.S.L.W. 4473 (May 4, 1981) severely restricts the availability of an employer's damages remedy under § 301. The holding of this case, when coupled with the Fifth Circuit's interpretation of *Buffalo Forge* in such a way as to negate judicial enforcement of collective bargaining agreements through the use of pre-arbitration injunctions, clearly deprives the employer of any opportunity to take action to effectively enforce the no-strike pledge.

Because this result is inconsistent with the objectives of national labor policy, the Court should take this opportunity to clarify *Buffalo Forge*. The Court's result there must be harmonized with the settled policy of federal labor relations favoring use of arbitration to resolve industrial disputes. That federal labor policy also requires that both parties to a collective bargaining agreement be able, equally, to enforce the terms therein.

ARGUMENT

I. A POLITICALLY MOTIVATED WORK STOPPAGE DOES NOT INVOLVE OR GROW OUT OF A LABOR DISPUTE WITHIN THE MEANING OF THE NORRIS-LAGUARDIA ACT AND A FEDERAL DISTRICT COURT IS NOT PRECLUDED FROM ENJOINING THAT WORK STOPPAGE

A. Congress Limited the Prohibitions of the Norris-LaGuardia Act to Controversies Involving "Labor Disputes"

The Norris-LaGuardia Act denies jurisdiction to a federal court to issue injunctive orders in cases "involving or growing out of any labor dispute."[4] The Act clearly defines a "labor dispute" in 29 U.S.C. § 13:

> [A]ny controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

This Court interpreted the Norris-LaGuardia Act's definition of the term "labor dispute" in *American Federation of Musicians* v. *Carroll*, 391 U.S. 99, *rehearing denied*, 393 U.S. 902 (1968). In that case, the Court concurred with the lower courts' view that the key to

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[4] The specific language of § 4 of Norris-LaGuardia, 29 U.S.C. § 104, provides as follows:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment . . . .

whether a labor dispute exists under the Norris-LaGuardia Act is the "presence of a job or wage competition or some other economic interrelationship affecting legitimate union interests between the union members and the [employers]." 391 U.S. 106.

In an earlier case, *Columbia River Packers* v. *Hinton*, 315 U.S. 143 (1942), the Court had also reviewed the term "labor dispute" as defined in § 13 of the Act and concluded:

> This definition and the stated public policy of the Act—aid to 'the individual unorganized worker . . . commonly helpless . . . to obtain acceptable terms and conditions of employment' and protection of the worker 'from the interference, restraint, or coercion of employers of labor'—make it clear that the attention of Congress was focused upon disputes affecting the employer-employee relationship, and that the Act was not intended to have application to disputes over the sale of commodities.

315 U.S. at 145 (footnote omitted). While acknowledging in *Hinton* Congressional concern that the term be given an expansive reading in order to further the legislative intent of assisting the then nascent labor movement,[5] the Court cautioned that "the statutory

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[5] The stated policy of the Act, expressed in § 2, 29 U.S.C. § 102 is as follows:

> In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:
>
> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and

classification, however broad, of parties and circumstances to which a 'labor dispute' may relate does not expand the application of the Act to include controversies upon which the employer-employee relationship has no bearing." 315 U.S. at 146-47. The Court concluded by emphasizing that the Act's prohibitions are to be given full force only in those situations in which the "employer-employee relationship [is] the matrix of the controversy." 315 U.S. at 147.

Carroll and *Hinton* thus define the scope of the prohibitions of the Norris-LaGuardia Act to include only the range of cases related to the objective of the Act to stop the federal courts from interfering with the developing labor union movement.[6] At the same time, these cases confirm that the Norris-LaGuardia Act has no application in cases which involve underlying disputes outside the employer-employee relationship.

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conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

[6] *Amalgamated Meat Cutters* v. *Jewel Tea Co.*, 381 U.S. 676, 686 (1965) (Norris-LaGuardia Act limited to cases involving dispute regarding "terms or conditions of employment.") *Cf. Order of Railroad Telegraphers* v. *Chicago & North Western Railway Co.*, 362 U.S. 330, *rehearing denied*, 362 U.S. 984 (1960) (labor dispute found where union attempted to change their terms of an existing collective bargaining agreement); *Marine Cooks & Stewards* v. *Panama Steamship Co., Ltd.*, 362 U.S., *rehearing denied*, 363 U.S. 809 (1960) (labor dispute involved where unions picketed to protest substandard wages paid by foreign flagship owners).

The legislative history of the Norris-LaGuardia Act compelled this conclusion. The House Report advocating passage of the Act's anti-injunction provision explains that its purpose was "to protect the rights of labor in the same manner the Congress intended when it enacted the Clayton Act . . . ." H.R. Rep. No. 669, 72d Cong., 1st Sess. 3 (1932), *quoted in Ashley, Drew & Northern Railway* v. *United Transportation Union*, 625 F.2d 1357, 1366 (8th Cir. 1980). Section 20 of the Clayton Act provides that a federal court cannot enjoin persons from "ceasing to perform any work or labor" in any case "between an employer and employees . . . involving or growing out of a dispute concerning terms or conditions of employment." 29 U.S.C. § 52. The influential promoters of the Act wanted to reverse restrictive court opinions, particularly *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443 (1921), which had restricted the protection of the Clayton Act to cases where the adversaries had a direct employer-employee relationship. F. Frankfurter & N. Greene, *The Labor Injunction* 217 (1930). As this Court recognized in *Hinton*, Congress enacted the Norris-LaGuardia Act to insure that federal courts would not enjoin labor disputes, thereby frustrating the efforts of workers seeking to organize themselves collectively, even if the participants in such disputes "do not stand in the proximate relation of employer and employee." *Columbia River Packers* v. *Hinton*, 315 U.S. at 146. *Accord, Bakery Drivers* v. *Wagshal*, 333 U.S. 437, 443 (1948).

In considering whether particular disputes are within the intended ambit of the Norris-LaGuardia Act, the lower courts have been guided by the Act's legislative history and this Court's opinions in *Hinton*, *Carroll*, and *Wagshal*. These lessons have generated the "economic self-interest test" to determine whether the controversy at issue constitutes a "labor dispute" within the meaning of § 13 of the Act. *E.g., Brotherhood of Railroad Train-*

men v. *Atlantic Coast Line Railway Co.*, 362 F.2d 649, 654 (5th Cir.), *aff'd*, 385 U.S. 20 (1966); *Ashley, Drew & Northern Railway* v. *United Transportation Union*, 625 F.2d 1357, 1366-67 (8th Cir. 1980), and cases cited therein. As one district court recently stated, the range of activities protected by the Norris-LaGuardia Act is defined by the "concrete economic interest of the parties." *Western Maryland Railroad Co.* v. *System Board of Adjustment*, 465 F. Supp. 963, 973 (D. Md. 1978).

Although the courts have adopted a very broad reading of the term "labor dispute" in cases where it was necessary to further the statutory interests of the Norris-LaGuardia Act,[7] they have readily acknowledged that the Act is inapplicable in a wide variety of situations involving labor unions. Thus, this Court found no labor dispute to exist in *Bakery Drivers* v. *Wagshal*, 333 U.S. 437 (1948). Relying on *Hinton*, the *Wagshal* court rejected the notion that a dispute between a bakery and a delicatessan over the time of bread deliveries constituted a labor dispute:

> To hold that under such circumstances a failure of two businessmen to come to terms created a labor dispute merely because what one of them sought might have affected the work of a particular employee of the other, would be to turn almost every controversy between sellers and buyers over price, quantity, quality, delivery, payment, credit, or any other business transaction into a 'labor dispute.'

333 U.S. at 443.

Similarly, in *Drywall Tapers and Pointers Local 1974* v. *Operative Plasterers*, 537 F.2d 669 (2d Cir. 1976), the appellate court concluded that an action seeking injunc-

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[7] *See, e.g., Marriott Corp.* v. *Great America Service Trades Council*, 552 F.2d 176, 179 (7th Cir. 1977); *Corporate Printing Co.* v *New York Typographical Union No. 6*, 555 F.2d 18, 21 (2d Cir. 1977) and cases cited therein.

tive relief to enforce the terms of an agreement over work jurisdiction between two international unions did not arise out of a labor dispute within the meaning of the Act. The court stressed that the statute was designed to rectify certain specified abuses of employee rights to organize and designate representatives, and that the injunctive relief requested was not in the nature of the abuse sought to be remedied by the Norris-LaGuardia Act. 537 F.2d at 673-74. *See also Blankenship* v. *Boyle*, 329 F. Supp. 1089 (D.D.C. 1971) (action against trustees of union welfare found not governed by Norris-LaGuardia).[8] Likewise, in *Conley Motor Express, Inc.* v. *Russell*, 500 F.2d 124 (3d Cir. 1974), the Third Circuit followed *Columbia River Packers* v. *Hinton*, 315 U.S. 143 (1942), and found that picketing by independent truck owner-operators was enjoinable because the picketing did not arise out of a labor dispute within the meaning of Norris-LaGuardia, inasmuch as the employees had "failed to show that the employer-employee relationship form[ed] the matrix of their controversy . . . ." 500 F.2d at 127.[9]

There is no doubt, in light of the established law interpreting the Norris-LaGuardia Act, that its scope is limited. The statute, by its terms, its stated policy,

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[8] *Cf. National Association of Letter Carriers* v. *Sombrotto*, 449 F.2d 915, 919 (2d Cir. 1971) (§ 4 of the Norris-LaGuardia Act restricts federal jurisdiction "only in certain specified instances, particularly with regard to the enjoining of strikes, the joining of labor unions and the lawful aid to persons engaged in such activities.")

[9] *Accord, Betteroads Asphalt Corp.* v. *Federacion de Camioneros, Inc.*, 391 F. Supp. 1035 (D.P.R. 1975) (dispute between a group of independent businessmen attempting to take away the business of another group of businessmen not a labor dispute); *Nassau Sports* v. *Peters*, 352 F. Supp. 870 (E.D.N.Y. 1972) (dispute over personal service contract not a labor dispute); *United States* v. *Fish Smokers Trade Council, Inc.*, 183 F. Supp. 227, 236 (S.D.N.Y. 1960).

legislative history and subsequent judicial interpretation restricts the jurisdiction of federal courts only in cases in which the employer-employee relationship forms "the matrix of the controversy." *Columbia River Packers* v. *Hinton*, 315 U.S. 143, 147 (1942).

B. The Court of Appeals Improperly Extended the Proscriptions of the Norris-LaGuardia Act to a Purely Political Controversy

Cognizant of the clear meaning of the term "labor dispute" as used in the Norris-LaGuardia Act, the district court below held that the Union's refusal to handle cargo destined for the Soviet Union was not a controversy within the Act's definition of labor dispute. (App., a 26). In reversing the district court on this point, the Fifth Circuit misinterpreted both the statute and the relevant case law.

The district court properly relied on precedent holding that political disputes remarkably similar to the one in this case do not present "labor disputes" within the meaning of the Norris-LaGuardia Act. *West Gulf Maritime Association* v. *International Longshoremen's Association*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd without opinion*, 531 F.2d 574 (5th Cir. 1976); *Harrington & Co., Inc.* v. *International Longshoremen's Association*, 356 F. Supp. 1079 (S.D. Fla. 1973); *Khedivial Line* v. *Seafarers' International Union*, 278 F.2d 49, 51 (2d Cir. 1960). *West Gulf* involved an earlier ILA protest against American grain shipments to the Soviet Union. Similarly, *Harrington* grew out of an ILA strike to protest the Bahamian Government's arrest of an ILA member. The courts in both cases found the disputes causing the strike to be political in nature. As the *Harrington* court noted, the ILA was not seeking to alter terms or conditions of employment, but merely to "dissent from the action of the Bahamian government." 356 F. Supp. at 1082. Both district courts then found injunctive relief appropriate.

In *Khedivial*, the Seafarers Union, together with the ILA, struck and picketed a cargo vessel owned by a private corporation residing in the United Arab Republic in retaliation for a blacklist instituted by that country against vessels that had carried cargo to Israel. Reversing the district court's denial of injunctive relief against the picketing, the Second Circuit found that Norris-LaGuardia was inapplicable, concluding that as broad "as the Act's definition of 'labor dispute' is, it is not broad enough to encompass" a dispute solely with the policies of the country of the shipowner. 278 F.2d at 51.

The Fourt Circuit reached a similar conclusion in *NLRB* v. *International Longshoremen's Association (Ocean Shipping)* 332 F.2d 992 (4th Cir. 1964). In that case, the court found that the ILA's refusal to load ships trading with Cuba was not a "labor dispute" within the meaning of § 2(9) of the National Labor Relations Act, 29 U.S.C. § 152(9).[10] The Fourth Circuit gave the following reasoning in reaching its conclusion that no "labor dispute" was involved:

> Essentially, Ocean's grievance relates to actions of ILA which are political in nature. As the NLRB found, ILA was implementing a 'clearly defined policy calculated to eliminate trade with Cuba.' Dissatisfaction with ILA's policy of refusing to work ships that have engaged in trade with Cuba does not constitute a controversy grounded in the 'terms

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[10] The definition of "labor dispute" in § 2(9) of the National Labor Relations Act is almost identical to the operative definition of "labor dispute" under § 13(c) of the Norris-LaGuardia Act, 29 U.S.C. § 113(c) (App., a 36), the two provisions should be construed consistently with one another. *See National Maritime Union* v. *NLRB*, 342 F.2d 538, 541 (2d Cir.), *cert. denied*, 382 U.S. 835, *rehearing denied*, 382 U.S. 933 (1965).

> and conditions of employment.' Not every activity of a labor organization, not even every controversy in which it may become involved, is a 'labor dispute' within the statutory meaning. *Cf. N.L.R.B.* v. *Miranda Fuel Co.*, 326 F.2d 172, 180 (2d Cir. 1963). Terms and conditions of employment are not in dispute here. The union activity here pertains to a general political question, in which ILA shares an interest with all citizens. It is not seeking to alter any terms or conditions of employment.

332 F.2d at 995-96.

With the singular exception of the Fifth Circuit decision in the instant case, there has been no instance in which the Norris-LaGuardia Act has been deemed applicable in a politically-motivated work stoppage. The Fifth Circuit below relied on an earlier Fifth Circuit opinion in *United States Steel Corp.* v. *United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975), *rehearing denied*, 526 F.2d 376, *cert. denied*, 428 U.S. 910 (1976) in resolving this issue (App., a 15-16). A careful reading of *U.S. Steel*, however, reveals that the question of the applicability of Norris-LaGuardia in that case was not at issue and consequently never addressed. 519 F.2d at 1241-42. Indeed, the court in *U.S. Steel* expressly stated that the case was "argued on a *Boys Markets* theory," 519 F.2d at 1247 n.23; thus, the applicability of Norris-LaGuardia was merely assumed.

In short, the Fifth Circuit provided no rationale in support of its decision to ignore relevant precedent and decide that the Norris-LaGuardia Act applies to a case not involving a labor dispute. Indeed, the Act plainly does not support the appellate court's extension of its prohibitions to a situation involving a purely political controversy. The employer-employee relationship has nothing whatsoever to do with motivating the Union's work stoppage; there similarly is no basis for extending the terms of the Norris-LaGuardia Act to a dispute completely unrelated to the abuses sought to be remedied by the Act.

C. The Appellate Court's Decision Seriously Undermines The Objectives Of National Labor Policy

In addition to being an unprecedented and unintended extension of the Norris-LaGuardia Act, the Fifth Circuit's opinion directly contravenes the well-settled objectives of national labor policy. The practical effect of the decision below is to leave the employer completely helpless in the face of a political strike. The Fifth Circuit's refusal to permit an employer to enforce a no-strike pledge in a situation where the employer is absolutely powerless to do anything to resolve the international situation giving rise to the work stoppage is intolerable. National labor policy clearly favors the enforcement of collective bargaining agreements by both parties, *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448 (1957), and this Court has never authorized a political strike in complete disregard of contractual obligations. *Cf. NLRB* v. *Sands Manufacturing Co.*, 306 U.S. 332 (1939). Expanding the prohibitions of the Norris-LaGuardia Act to insulate a union from its contractual obligations twists that statute into a heretofore unrecognizable shape. Moreover, there is absolutely nothing in the fifty year history of Norris-LaGuardia to suggest that it can be used by a union to evade responsibility for actions completely unrelated to the purposes for which the statute was enacted.

Conscious of the goals of national labor policy, this Court has recognized decided limits to the range of politically-motivated union activity. Thus, the Court has employed the economic self-interest analysis applicable here to the Norris-LaGuardia Act issue to resolve the closely-related question of whether politically-motivated conduct by employees is protected activity within the meaning of the "mutual aid and protection" clause of § 7 of the National Labor Relations Act, 29 U.S.C. § 157. In *Eastex, Inc.* v. *NLRB*, 437 U.S. 556 (1978), this Court observed

that "[t]here may well be types of conduct or speech that are so purely political or so remotely connected to the concerns of employees as employees as to be beyond the protection of § 7." 437 U.S. at 570 n.20.[11] The Court further stated that "[o]ther laws . . . may place limits on concerted activity in the legislative and political spheres." *Id.* at 566 n.16.

Following that analysis, the D.C. Circuit recently affirmed a National Labor Relations Board decision holding that § 7 did not protect employees who sought to hand out leaflets urging other employees to vote for particular candidates whose positions on issues were favorable to organized labor. *Auto Workers Local 174* v. *NLRB*, 106 L.R.R.M. 2561 (D.C. Cir., March 3, 1981). The key to the court's resolution of *Auto Workers* was the conclusion that the leaflets were designed to "induce employees to vote for specific candidates, not to educate them on political issues relevant to their employment condition." 106 L.R.R.M. at 2563. The analogy between the Union's conduct in this case and that involved in *Auto Workers* is patent; neither controversy involved the economic self-interest of the union, or arises from the matrix of an employer-employee relationship.

Furthermore, the appellate court's suggestion in *Auto Workers* that the question of whether specific conduct is "purely political" or directed at improving terms and conditions of employment is best analyzed as a continuum, 106 L.R.R.M. at 2564, provides a useful way of analyzing the conduct at issue here. Certainly, when viewed as part of a spectrum running from the "purely

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[11] The *Eastex* opinion leaves no doubt about the close relationship between § 7 of the National Labor Relations Act and the Norris-LaGuardia Act; in *Eastex*, the Court observed that § 7 was "modeled" after the language of § 2 of Norris-LaGuardia in an effort to protect the right of wage earners "to organize and to act jointly in questions affecting wages, conditions of labor, and the welfare of labor generally." 437 U.S. at 566 n.14.

political" to the "directly related to terms and conditions of employment," the Union's Russian cargo boycott falls extremely close to the "purely political" end of that spectrum. The Union has consistently admitted and the Fifth Circuit found that the dispute "was not motivated by any hope for economic gain or by any dispute with any employer members, but was purely a political protest." (App., a 3).

As in *Eastex*, this case calls for a balancing of the right of the employer to expect that a union will abide by a freely-given no-strike pledge against the political objectives of the Union. Striking that balance, in light of the objectives of national labor policy, is not difficult in the instant case where, unlike *Eastex*, the striking employees confess to no objective at all related to the employer-employee relationship.

That purely political activity on the part of unions finds no protection under federal labor law is further confirmed by the acknowledgement of both the National Labor Relations Board and reviewing courts that the collective bargaining process is similarly confined to matters within the economic self-interest of the employees. Thus, the Labor Board has consistently held, for example, that the issue of an industry promotion fund, to which employers make payments for the general promotion and betterment of a particular industry, is not a mandatory subject of bargaining under § 8(d) of the Act, because, in the words of the Eighth Circuit, "[i]ndustry promotion funds do not encompass any aspect of the employer-employee relationship." *NLRB* v. *Laborers' Local 264*, 529 F.2d 778, 786 (8th Cir. 1976). *Accord, NLRB* v. *Detroit Resilient Floor Decorators' Local 2265*, 317 F.2d 209, 270 (6th Cir. 1963); *Sheet Metal Workers' Local No. 38 (Elmsford Sheet Metal Works)*, 231 N.L.R.B. 699 (1967). *See also Globe Cotton Mills* v. *NLRB*, 103 F.2d 91, 94 (5th Cir. 1939).

The limits put on political activity by federal labor policy were recently reaffirmed by the First Circuit in *Allied International, Inc.* v. *ILA*, 640 F.2d 1368 (1st Cir. 1981), *petition for cert. filed*, 49 U.S.L.W. 3763 (April 3, 1981), No. 80-1663. Rejecting the argument that the ILA is immune from "secondary boycott" [12] liability resulting from the same boycott at issue here, the court found the absence of a "labor dispute" very significant:

> We think it more rather than less objectionable that a national labor union has chosen to marshal against neutral parties the considerable powers derived by its locals and itself under the federal labor laws in aid of a random political objective far removed from what has traditionally been thought to be the realm of legitimate union activity. *Cf. NLRB* v. *Washington-Oregon Shingle Weavers' District Council*, 211 F.2d 149, 152 (9th Cir. 1954) (boycott ordered "not because of any dispute, but merely because the union dislikes the other producer for any reason, or for no reason, . . . would appear even more reprehensible."). The labor laws do not confer upon bargaining representatives a voice in the conduct of foreign policy. The fact that there have been few, if any, cases that have applied the secondary boycott provisions to activity motivated by a "purely political dispute" illustrates little more than the rarity with which labor unions have seen fit to engage in this sort of "political strike" conduct. . . . The potential danger of uncontrolled, whimsical activity is obvious. It must be remembered that a union's ability to apply crippling secondary pressure is greatly enhanced by its position under the federal labor laws; without even the justification of a labor-oriented motive, such forbidden secondary activity is *a fortiori* precluded.

640 F.2d at 1378 (footnotes omitted).

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[12] Section 8(b)(4) of the Labor Management Relations Act, 29 U.S.C. § 158(b)(4), generally prohibits a union from engaging in coercive conduct against neutral employers in order to apply additional pressure on an employer with whom the union has a dispute.

Politically-motivated conduct of the kind involved in this case plainly should not enjoy the protection of the Norris-LaGuardia Act. The heretofore consistent application of national labor policy has never recognized that a union is permitted to disrupt otherwise stable employment relationships in support of "random political objectives." The Fifth Circuit's opinion in this case improperly ignores and seriously upsets the careful balance between labor and management which is the goal of national labor policy.

D. The Fifth Circuit's Opinion Permits Intolerable Interference With The Government's Formulation Of Foreign Policy.

This case also raises serious questions concerning interference with American foreign policy. At the time of the work stoppage in the instant case, Occidental's shipment of SPA to the Soviet Union was fully consistent with the foreign trade policy of the United States (J.A. 133). Recently, as noted above, the embargo covering SPA has been lifted by the President. *See* 46 Fed. Reg. 23923 (April 29, 1981). It is quite clear, however, that the Union has demonstrated a definite proclivity to substitute itself for the Executive Branch of the federal government in attempting to influence and direct the foreign policy of the United States. *See Harrington & Co., Inc.* v. *International Longshoremen's Association*, 356 F. Supp. 1079 (S.D. Fla. 1973) (protest against Bahamian government); *West Gulf Maritime Association* v. *International Longshoremen's Association*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd without opinion*, 531 F.2d 574 (5th Cir. 1976) (protesting 1975 grain sales to the Soviet Union); *Khedivial Line* v. *Seafarers' International Union*, 278 F.2d 49 (2d Cir. 1960) (protesting United Arab Republic's boycott of Israel); *NLRB* v. *International Longshoremen's Association (Ocean*

Shipping), 332 F.2d 992 (4th Cir. 1964) (protesting Castro's revolution in Cuba.) Indeed, these forms of political protest have continued over the course of the last two years, as the Union, stirred to anger by one international incident after another, has threatened to boycott cargo destined to or from Iran, Poland, and Great Britain. *See N.Y. Times*, Nov. 10, 1979, at 7, col. 2 (Iranian boycott); *N.Y. Times*, Aug. 21, 1980, at 10, col. 6; *N.Y. Times*, Aug. 28, 1980, at 7, col. 1 (Polish boycott); [1981] Daily Lab Rep. (BNA) A-9-10 (May 7, 1981) (British Boycott).

It need hardly be stated that such unpredictable conduct necessarily undermines the reasoned resolution of delicate issues involved in foreign policy, and can very well cause serious disruption in our relationships with countries abroad. The clear impact of the Fifth Circuit's opinion is that a union is permitted to pursue its whimsical political objectives by means of strikes and boycotts, irrespective of the impact of such conduct on both domestic labor relations policy and American foreign policy. Congress certainly did not intend the Norris-LaGuardia Act to provide a union with this kind of *carte blanche*.

The narrow question at issue here therefore is whether the Norris-LaGuardia Act removes a federal court from having jurisdiction to consider a request for injunctive relief against this type of political conduct, in a situation where the employer claims that the work stoppage violates a contractual no-strike provision contained in a collective bargaining agreement. Congress plainly did not intend to permit a union to evade its responsibilities under a collective bargaining agreement in such a manner. Furthermore, the Norris-LaGuardia Act should not be found to deny federal court jurisdiction over a dispute precipitated by a controversy having nothing whatsoever to do with the matrix of the employer-employee relationship.

II. PROPER DEFERENCE TO THE PRESUMPTION OF ARBITRABILITY AND THE POLICIES UNDERLYING NATIONAL LABOR MANAGEMENT RELATIONS POLICY SUPPORTS THE ISSUANCE OF INJUNCTIVE RELIEF IN THIS CASE

Having decided that the dispute between the Union and Occidental was within the scope of the Norris-LaGuardia Act, the Fifth Circuit concluded that injunctive relief was unwarranted under the criteria established by this Court in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) and *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976). The Fifth Circuit determined that the dispute underlying the strike was the Soviet invasion of Afghanistan, and that such disputes could not be arbitrated under the parties' collective bargaining agreement (App., a 21a). Should this Court determine that the Union's work stoppage does constitute a labor dispute under Norris-LaGuardia, it should affirm nonetheless the propriety of the district court's injunction because the court of appeals misapplied the principles enunciated by this Court in *Boys Markets*.

Those principles stress the importance of arbitration as a substitute for industrial strife in resolving labor management disputes. Central to furtherance of arbitration in labor disputes is the oft-quoted "presumption of arbitrability" articulated by this Court. *See United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

Relying on those principles, Occidental argued that injunctive relief under *Boys Markets* was appropriate in the instant case, assuming the parties' dispute was found subject to the Norris-LaGuardia Act, because of the existence of a management rights clause in the contract between JBT and the Union. That provision states:

> The Management of the Employer's business and the direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically

> provided in the Agreement, all of the rights, powers and authority Employer had prior to signing of this Agreement are retained by Employer. (J.A. 60).

This language recognizes JBT's right to direct the work force and operate its business. Choosing one's customers is obviously a necessary aspect of management's "operation of the business," or else the employer could have that very fundamental aspect of decision-making dictated to him. The Union's boycott thus was translated into a disagreement over Occidental's choice of a particular customer. A dispute of this nature plainly involves interpretation of the management rights clause in the parties' collective bargaining agreement. The appellate court declined, however, to analyze that contention, and simply concluded that the Union's grievance was not "a complaint against JBT doing business with the Soviets," but "a complaint against the actions of the U.S.S.R. itself." (App., a 21).

This Court's decision in *Boys Markets* does not permit such a result. In that case, the Court set out to accommodate the potentially conflicting statutory language and policies underlying the Norris-LaGuardia Act and § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), which authorizes suits for violation of contracts between an employer and a labor organization. In accommodating the two acts, the *Boys Markets* Court was influenced by the proarbitration policy established by this Court in the *Steelworkers* trilogy,[13] noting that its reason for reconsidering *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962), was that its holding stood "as a significant departure from our otherwise consistent emphasis upon the congressional policy to

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[13] *United Steelworkers* v. *American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

promote the peaceful settlement of labor disputes through arbitration . . . ." 398 U.S. at 241. Thus, the *Boys Markets* Court, given a no-strike provision in the contract between the parties, permitted the issuance of an injunction against a strike by the union pending arbitral resolution of the underlying dispute.

The Fifth Circuit, however, paid scant attention to this policy. Rather than acknowledging that the presumption of arbitrability extends to § 301 injunction actions, *see Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368 (1974), the appellate court ignored this Court's admonition in *Warrior & Gulf* that "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not suspectible of an interpretation that covers the asserted dispute. *Doubts should be resolved in favor of coverage.*" 363 U.S. at 582-83 (footnote omitted) (emphasis added). Instead of furthering the policy favoring arbitration as the method of resolving such disputes, the Fifth Circuit impermissibly decided *on the merits* that the dispute underlying the Union's work stoppage was not arbitrable, effectively usurping the arbitrator's role as the interpreter of the collective bargaining agreement. *See generally United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

The Fifth Circuit compounded its error by concluding that *Buffalo Forge* precluded injunctive relief in this case (App., a 20-21). *Buffalo Forge* held that a particular type of work stoppage, a sympathy strike in support of a grievance by other employees that was not arbitrable between the union and the employer, was not enjoinable prior to arbitration. 428 U.S. at 403-04. *See Complete Auto Transit* v. *Reis*, 49 U.S.L.W. 4473, 4477 (May 4, 1981) (Powell, J., concurring in part and concurring in judgment). The Court's conclusion in *Buffalo Forge* that the employer would not be deprived "of its bargain," 428

U.S. at 408, must be tested in this case in the context of the scope of the entire collective bargaining agreement between the parties.

A review of the parties' entire bargaining agreement demonstrates that the employer was deprived of its bargain by the denial of injunctive relief. Although the Union's work stoppage was intended primarily as a protest against the Soviet intervention in Afghanistan, it had, in addition, both the purpose and effect of precluding Occidental from doing business with the Soviet Union. That the protest resulted in curtailment of trade relations between Occidental and the Soviet Union is evident from the facts of the instant case. Moreover, that the Union intended this result becomes evident upon consideration of the fact that the Union would have had no means of publicizing its disapproval of the Soviet military action or penalizing the Soviets for such action, without putting pressure on those American companies which were trading with the Russians. The Union took action against Occidental only because of its decision to do business with the Soviets; absent the trade agreements with the Soviet Union, the Union would not have engaged in any work stoppage against JBT. Thus, in effect, the Union extended its dispute with the Soviets to include all employers which continued to do business with the Soviet Union.

The Union's work stoppage, as stated above, thus prompted a disagreement as to Occidental's choice of customers, inasmuch as that question is inseparable from and inextricably related to the Union's opposition to the Soviet Union. Had the Union wanted to limit its protest to opposition to the Soviets, it could readily have done so without involving JBT.

Not only does this fact make the underlying dispute an arguable question of interpretation of the management rights clause, a close look at other relevant provisions in the contract compels the conclusion that the

Fifth Circuit reasonably could not have "said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Warrior & Gulf*, 363 U.S. at 582-83.

The parties' arbitration provision makes it clear that any disagreement the Union might have had with regard to JBT's perception and exercise of its management right was subject to mandatory arbitration pursuant to paragraph 15(B) of the collective bargaining agreement. That procedure specifically covers all "matters under dispute which cannot be promptly settled between the local and an individual Employer." (J.A. 62). The grievance and arbitration procedure in no way limits the kinds of disputes which may be brought forward. Thus, there is no basis for any inference against the arbitrability of any dispute of any kind, much less one which so directly concerns the scope of management's prerogative in deciding with whom it will do business.

In partial exchange for the employer's promise to arbitrate all "matters under dispute," the Union promised that they would forebear engaging in "any strike of any kind of degree whatsoever . . . for any cause whatsoever" during the term of the contract (J.A. 61).[14] Accordingly, the Union's work stoppage in this case was "over" an arbitrable issue inasmuch as it involved a disagreement over the application of the management rights provision, which on its face gives to JBT alone the right to decide with whom it does business.[15]

Recalling the Court's admonition that "doubts [as to arbitrability] should be resolved in favor of coverage,"

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[14] It must be remembered though, as the Court stressed in *Gateway Coal*, that consideration of no-strike and arbitration provisions are analytically distinct. 414 U.S. at 382.

[15] Significantly, arbitrators have already determined in the companion case to this one, that the ILA boycott violates contractual no-strike provisions (App., a 22-23).

Warrior & Gulf, 363 U.S. at 582-83, and the express extension of the presumption of arbitrability to injunction actions, it is thus clear that the Fifth Circuit erred in deciding that the dispute underlying the work stoppage was not arbitrable and that injunctive relief was accordingly not appropriate on the facts of this case. It is impossible in this case to state "with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Id.*

This is an ideal case for the application of the presumption in favor of arbitrability. Arbitrators are routinely called upon to interpret the scope of management rights clauses in the context of many different industrial disputes over the exercise of managerial prerogative. *See e.g., Ingersoll-Rand Co.*, 70-1 Lab. Arb. Awards ¶ 8421 (1969) (Teple, Arb.); *Mead Corp.*, 64 Lab. Arb. & Disp. Settl. 421 (1975) (Ferguson, Arb.); *Videotape Productions of New York*, 68-2 Lab. Arb. Awards ¶ 8728 (1968) (Turkus, Arb.); *Trojan, Inc.*, 1975 Lab. Arb. Awards ¶ 8124 (1975) (Sherman, Arb.).

The Fifth Circuit's decision is further flawed by its lack of appreciation of the policy considerations underlying *Boys Markets*. *Boy Markets* represents an accommodation of Norris-LaGuardia and § 301. 398 U.S. at 250. The Court's decision in *Buffalo Forge* is best understood when it is remembered that federal court injunctions against sympathy strikes were one of the very evils sought to be remedied by the Norris-LaGuardia Act. *See generally* F. Frankfurter & N. Greene, *The Labor Injunction* (1930). As already established, however, that statute has no application in this case. Injunctive relief herein thus would do no violence to the policies of Norris-LaGuardia, and *Buffalo Forge* is therefore easily distinguishable.

Accordingly, the Union's strike prior to arbitration evaded the employer's right to arbitration and thus

operated to deprive the employer of its bargain. The Fifth Circuit misapplied the principles of *Boys Markets* and *Buffalo Forge* and effectively negated the policy underlying § 301 as expressed by this Court in its statement that "unions as well as employers should be bound to collective bargaining agreements . . . [and there should be] . . . a procedure for making such agreements enforceable in the courts." *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 453 (1957).

III. THE OVERLY-EXPANSIVE INTERPRETATION GIVEN TO THIS COURT'S DECISION IN *BUFFALO FORGE* BY THE APPELLATE COURT IS INCONSISTENT WITH THE GOALS OF NATIONAL LABOR POLICY

This case can be resolved without reference to this Court's decision in *Buffalo Forge*. Should the Court decide, however, that the case does involve a labor dispute within the ambit of the Norris-LaGuardia Act's anti-injunction prohibitions, the correctness of the appellate court's interpretation of *Boys Markets* and *Buffalo Forge* must be tested. In that event, Occidental urges the Court to clarify its holding in *Buffalo Forge*, because the Fifth Circuit's decision below demonstrates that the lower courts are applying *Buffalo Forge* in a manner that seriously undermines the goals of national labor policy.

The Court in *Buffalo Forge* held that the Norris-LaGuardia Act precluded the issuance of a pre-arbitration injunction in a case involving a sympathy strike, on the strength of the majority's conclusion that the strike was not "over" an arbitrable grievance. 428 U.S. at 403-04. *See Complete Auto Transit* v. *Reis*, 49 U.S.L.W. 4473, 4477 (May 4, 1981) (Powell, J., concurring in part and concurring in judgment). The majority reasoned that *Boys Markets* injunctive relief should not be available in a situation where the dispute underlying the strike was not arbitrable, because the *Boys Markets* exception to Norris-LaGuardia, which was premised on the

policy favoring resolution of industrial disputes through arbitration, would be inapplicable in such a case. 428 U.S. at 407-11.

The Court left unresolved in *Buffalo Forge* the meaning of the requirement that a strike be "over an arbitrable grievance." The meaning of this requirement was further obscured by the Court's statement that a disagreement about the scope of a contractual no-strike clause would not constitute an "arbitrable grievance" warranting consideration of injunctive relief. Thus even though the question of the legality of a strike *vis à vis* the no-strike clause is an arbitrable issue, the Court in *Buffalo Forge* interposed the requirement that there be an additional arbitrable issue underlying the strike. 428 U.S. at 406-09.

Developments since *Buffalo Forge* make it clear that the Court's concern for effectuating a policy in favor of arbitration has overshadowed the concomitant principle underlying § 301(a), *viz.*, that collective bargaining agreements should be enforceable by both parties in federal court. Indeed, this case graphically demonstrates the absolute helplessness of an employer confronted with a strike that is, if the Fifth Circuit is to be believed, precipitated by a non-arbitrable dispute. This Court's decision in *Carbon Fuel Co.* v. *United Mine Workers*, 444 U.S. 212 (1979), holds that a parent union normally is not obligated to take affirmative steps to prevent or terminate a wildcat strike. Obviously this holding severely restricts an employer's ability to pursue effectively a claim for damages under § 301. More recently, in *Complete Auto Transit* v. *Reis*, 49 U.S.L.W. 4473 (May 4, 1981), the Court foreclosed relief in damages against individual employees in wildcat strikes.

Ironically, both *Carbon Fuel* and *Complete Auto Transit* suggest that an employer take some solace from the availability of other remedies, including the right to seek injunctive relief against such a strike, or to take dis-

ciplinary action against the striking employees.[16] Yet, *Buffalo Forge* seemingly prohibits an employer from seeking injunctive relief unless the strike is over an arbitrable dispute. Precluding such a remedy is particularly harsh where, as here, the employer is powerless to do anything to resolve the underlying dispute. Permitting a union to violate a no-strike clause with impunity whenever international events take an unpleasant turn, while at the same time denying the employer the right to effective enforcement of that no-strike pledge, seriously distorts the policy of § 301 in favor of enforcement of collective bargaining agreements by both parties. *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. at 449.

The legislative history of § 301 demonstrates that the Congress was concerned with redressing the balance of power in collective bargaining because of a wave of labor unrest caused by strikes during the term of collective bargaining agreements containing no-strike clauses. *See Complete Auto Transit* v. *Reis*, 49 U.S.L.W. at 4477 (Powell, J., concurring in part and concurring in the judgment). The decision of the Fifth Circuit in the instant case, demonstrates that this balance has once again slipped, with employers caught in a "lawless vacuum" due to an absence of remedies available to enforce a no-strike pledge. *Id.* at 4478 (Powell, J., concurring in part and concurring in the judgment).

Buffalo Forge has occasioned considerable confusion among the lower courts about their proper role in reviewing a request for *Boys Markets* relief. The result feared by the *Buffalo Forge* majority, *i.e.*, "massive" entry by the courts into the business of contract inter-

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[16] Not only is it questionable whether pursuing discipline is an effective means of ending a wildcat strike, let alone consistent with national labor policy, confusion caused by *Buffalo Forge* has prompted the National Labor Relations Board to restrict the availability of that remedy as well. *See* pp. 39-40 n. 19, *infra*.

pretation, has occurred. 428 U.S. at 414.[17] Indeed, a major by-product of the Court's decision has been the fact that courts have been forced to carefully analyze and interpret the parties' contract to determine whether a given strike is actually over an arbitrable issue. This task of judicial contract interpretation occurs with great frequency and with decidedly unpredictable results.

The one point about which the lower courts have had the most difficulty is in interpreting the *Buffalo Forge* articulation of the *quid pro quo* theory. 428 U.S. at 407. The Third Circuit's decision in *Delaware Coca-Cola Bottling Co.* v. *Teamster Local 326*, 624 F.2d 1182 (3d Cir. 1980), is illustrative. There, the appellate court reversed an award of damages against the union as a result of a "sympathy strike" during the term of the parties' collective bargaining agreement, which, according to the district court's opinion, had violated § 301(a). Despite the fact that the contractual no-strike clause at

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[17] At least one commentator critical of *Buffalo Forge* has questioned this premise as follows, arguing that the Court:

> [O]verlooked the fact that trial courts possess sufficient authority to avoid both a determination of the merits of no-strike obligations and the abuses of power associated with the labor injunctions of the past. The injunction need be nothing more than an order preserving the status quo pending an arbitral determination of the merits of a claimed breach of an express or implied no-strike obligation. Preserving the status quo is one of the traditional functions of equity, and an order requiring expedited arbitration should be a sufficient safeguard against the status quo order becoming, in effect, a final determination of the right to strike or respect a picket line.

Smith, The Supreme Court, *Boys Markets* Labor Injunctions and Sympathy Work Stopages, 44 U. Chi. L. Rev. 321, 346-47 (1977) (footnotes omitted). *Cf.*, Cox, "Current Problems in the Law of Grievance Arbitration," 30 Rocky Mount. L. Rev. 247, 256 (1958) ("Making an exception [to Norris-LaGuardia] for strikes in breach of contract would carry out a fairly specific legislative enactment without inviting judicial determination of labor policy.").

issue was very broad, the Third Circuit found it ineffective as a waiver of the right to engage in a sympathy strike. 624 F.2d at 1185. The court reached that conclusion by resort to the principle of coterminous application of no-strike and arbitration provisions, derived from *Buffalo Forge*. Indeed, the *Delaware Coca-Cola* court followed *Buffalo Forge* to hold that it would apply the *quid pro quo* theory of coterminous interpretation, even where there is an express no-strike clause in the contract, absent some contrary evidence. The court assumed that "normally the employer will not agree to arbitration unless he gets an agreement from the union that it will not strike *over those arbitrable issues*." 624 F.2d at 1186 (emphasis added). Applying this reasoning, the Third Circuit reversed the lower court's award of damages, concluding that the union's strike action did not violate the contractual no-strike clause. *Accord, United Steelworkers* v. *Fort Pitt Steel Casting*, 635 F.2d 1071, 1077-78 (3d Cir. 1980), *petition for cert. filed*, 49 U.S.L.W. 3727 (March 16, 1981). *Contra, Iowa Beef Processors, Inc.* v. *Amalgamated Meat Cutters*, 597 F.2d 1138, 1145 (8th Cir. 1979), *cert. denied sub nom., Amalgamated Meatcutters* v. *Iowa Beef Processors, Inc.*, 444 U.S. 840 (1979).

This kind of judicial experience calls into question the notion that the agreement not to strike is always the *quid pro quo* for the promise to arbitrate, and that those two provisions should be given coterminous application. *Buffalo Forge*, 428 U.S. at 414, *cf. Gateway Coal* v. *United Mine Workers*, 414 U.S. 368, 382 (1974). Numerous cases involving employer damage actions and employer discipline of strikers in sympathy strikes attest to the fact that a union's agreement to a broad no-strike clause often does include an obligation not to engage in sympathy strikes. *See* Cantor, "*Buffalo Forge* and Injunctions Against Employer Breaches of Collective Bargaining Agreements." 1980 Wisc. L. Rev. 247, 253 n.35 and cases cited therein. It is also true that a large num-

ber of collective bargaining agreements contain some exceptions to the union no-strike obligation. *See* Feller, "A General Theory of the Collective Bargaining Agreement," 61 Calif. L. Rev. 663, 758 (1973).

In this context it is clear that contractual no-strike clauses are not simply "*quid pro quos*" for contractual grievance arbitration procedures. *Cf. Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 455 (1957). While this may have been how such no-strike provisions historically developed, Feller, 61 Calif. L. Rev. at 757, it is not necessarily true today. *Id.* at 758. As this Court expressly recognized in *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 382 (1974), contractual no-strike and arbitration clauses present two "analytically distinct" issues each of which "depends on the intent of the contracting parties." Commentators critical of *Buffalo Forge* have questioned the Court's apparent assumption that the parties to the collective bargaining agreement there had "bargained for" judicial enforcement of a no-strike clause "only when there was a strike over an arbitrable issue." Gould, "On Labor Injunctions Pending Arbitration: Recasting *Buffalo Forge*," 30 Stan. L. Rev. 533, 548 (1978). *See also* Cantor, 1980 Wisc. L. Rev. at 249 and authorities cited therein.

The instant case demonstrates how the assumption made in *Buffalo Forge* can deprive the employer of his bargain. Here the parties agreed to a broad no-strike clause prohibiting work stoppages "for any reason whatsover." Certainly, JBT's expectation was that its bargain would insure uninterrupted operations in circumstances other than sympathy strikes. This expectation, however, was plainly frustrated. *Cf. Textile Workers* v. *Lincoln Mills*. When the union struck in protest of the company's decision to continue to do business with the Soviet Union, the company was denied injunctive relief pursuant to *Buffalo Forge*. The court, applying *Buffalo Forge*, held that the no-strike clause would be equitably

enforced only to the extent the strike arose over an arbitrable dispute. The fact that the employer had bargained for and received a far broader no-strike commitment was disregarded.

Lower court difficulties with issues of contract interpretation extend, however, beyond the questionable assumption of coterminous interpretation. In many other situations, federal courts have, as in this case, assumed the arbitrator's role, by improperly deciding that certain "underlying" grievances were not arbitrable.

For example, in *Design & Manufacturing Corp.* v. *Auto Workers, Local 2042*, 608 F.2d 767 (7th Cir. 1979), *cert. denied*, 446 U.S. 938 (1980), the union went on a sympathy strike over transfer of work from a struck plant to another plant of the company. The employer obtained federal district court injunctive relief on the grounds that the issue, movement of work, was a matter subject to the contract's arbitration clause. On appeal, however, the Seventh Circuit engaged in a lengthy analysis of the parties' contract in order to determine whether the strike was really over an arbitrable issue. Following this analysis, the court concluded that "nothing in the [parties'] collective bargaining agreement prevents the movement of such work between plant locations," 608 F.2d at 770. Disagreeing with the district court which interpreted the contract differently to find the dispute arbitrable, the Seventh Circuit reasoned that the case involved only a dispute over the application of the no-strike clause. *Id.*[18]

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[18] The Seventh Circuit's opinion suggests the clearly anomalous result that the question of an arbitrable dispute for purposes of *Buffalo Forge* depends on the location of certain language in particular clauses of the contract; the court's opinion implies that had the language regarding transfer of work appeared elsewhere in the contract and not in the sympathy strike provision, that injunctive relief would have been appropriate. 608 F.2d at 770.

Likewise, in *Waller Brothers Stone Co.* v. *United Steelworkers*, 620 F.2d 132 (6th Cir. 1980), both the trial and appeals court were forced to engage in a complicated analysis of the parties' contract to determine whether a strike in that case was over an arbitrable issue. When the company purchased a new machine to help pack stone in a stone quarry, the union argued that it was entitled to negotiate a new wage rate for employees operating this machine. The company on the other hand contended that work on this machine was simply part of the overall job function of "craters," employees who packed stone, and that people working on this machine should simply be paid the "crater" wage rate. When the union struck, the district court held that the dispute involved the function and scope of the crater job and then, interpreting the contract, found that this was an arbitrable matter. Consequently, the court enjoined the strike pending arbitration. The Sixth Circuit reversed, acknowledging, however, that the arbitrability of the underlying dispute was unclear and posed "difficult problems of contract interpretation," 620 F.2d at 136. While noting that a major premise of *Buffalo Forge* was that questions of contract interpretation were not appropriate for the courts, *id.* at 136-37, the appeals court, however, nevertheless engaged in a very lengthy and complex analysis of the parties' contract before it was able to determine that the underlying dispute was over wage rates and thus not an arbitrable issue under *Buffalo Forge*. *See also Mohawk Rubber Co.* v. *United Rubber Workers*, 462 F. Supp. 993 (N.D. Ohio 1978); *American Ship Building Co.* v. *Brotherhood of Boilermakers, Local 358*, 459 F. Supp. 491 (N.D. (Ohio 1978); *Coordinating Committee Steel Co.* v. *United Steelworkers*, 436 F. Supp. 208 (W.D. Pa. 1977); *Eaton Corp.* v. *International Association of Machinists*, 580 F.2d 254 (7th Cir. 1978); *Matson Plastering Co.* v. *Operative Plasterers*, 633 F.2d 1307 (9th Cir. 1980).

Additionally, this Court's recent decision in *Complete Auto Transit* v. *Reis*, 49 U.S.L.W. 4473 (May 4, 1981), demonstrates the lengths to which lower courts have gone in a frustrating search for the correct meaning of *Buffalo Forge*. There the lower courts were confronted with the issue of whether *Buffalo Forge* bars injunctive relief when a dispute which began over a non-arbitrable issue is later "transformed" into a dispute over an arbitrable issue. In that case, the district court held that, under *Buffalo Forge*, if a dispute is not initially "precipitated by" a conflict over an arbitrable issue, injunctive relief is not appropriate. 49 U.S.L.W. at 4474. The Sixth Circuit, however, reversed, cautioning that courts must be concerned with whether the strike is "over" an arbitrable issue at the time they render their decision, and not with whether the strike was originally "precipitated by" an arbitrable dispute. 614 F.2d 1110, 1114 (6th Cir. 1980). The critical fact to the appellate court was that the reason for the work stoppage changed from an intra-union dispute which was found non-arbitrable, to a question of amnesty for the striking employees, a matter clearly arbitrable under the parties' collective bargaining agreement. This Court expressed no view on whether the Sixth Circuit's ruling was correct. 49 U.S.L.W. at 4474 n.4.

In short, the effect of *Buffalo Forge* has been to undermine free collective bargaining with respect to contractual no-strike clauses. Other remedies arguably available to employers for such breaches clearly do not serve as an adequate substitute for immediate equitable relief. 428 U.S. at 418 n.8 (Stevens, J., dissenting).[19] Indeed, one

[19] As noted above, the Court has recently severely cut back on an employer's ability to obtain damages in the case of a strike in breach of a no-strike clause. *Carbon Fuel*, 444 U.S. 212; *Complete Auto Transit*, 49 U.S.L.W. 4473. Moreover, recently the National Labor Relations Board has begun to limit the employer's right to discipline striking workers by finding such

commentator has argued that the "per se" rule adopted in *Buffalo Forge* denies employers who bargained for broad no-strike clauses their contractual expectation of fully uninterrupted production. Gould, 30 Stan. L. Rev. at 546-47. Consequently, as evidenced by the no-strike clause at issue here which, in apparent response to *Buffalo Forge*, permits sympathy strikes, the incentive for employers to negotiate for broad no-strike clauses is diminished to the extent such clauses are not equitably enforceable. Employers without incentive to do otherwise, will negotiate for no-strike clauses only broad enough to prohibit strikes over arbitrable disputes. The logical result will be increased resort to costly industrial strife rather than arbitration as a means of resolving disputes.

This result cuts directly against the goal of the National Labor Relations Act—the promotion of industrial peace through collective bargaining, 29 U.S.C. § 151 (1976). It is also at odds with the policy enunciated by Congress in § 301(a) providing for the enforcement of all labor-management contractual obligations and with that set forth by Congress in § 2 of the Norris-LaGuardia Act, 29 U.S.C. § 102 (1976), insuring workers the right to "exercise actual liberty of contract."

The *Buffalo Forge* Court clearly did not intend that one party to a collective bargaining agreement would be

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attempted enforcement to constitute an unfair labor practice. *See, e.g., Pacemaker Yacht Co.*, 253 N.L.R.B. No. 95 (December 18, 1980); *accord, Amcar Division, ACF Industries*, 247 N.L.R.B. No. 138 (Feb. 14, 1980), *enforcement denied*, 106 L.R.R.M. 2518 (8th Cir., February 9, 1981). The logic of the Board's decision in *Pacemaker Yacht* is that the employees had not specifically waived the right to strike over a particular issue, despite the existence of a broad no-strike clause in the contract. Since the waiver was not explicit, the employer's discharge of employees for violating the no-strike clause was unlawful. *Id.* The import of such decision would plainly leave an employer without recourse in the event of such a strike. *See also Delaware Coca-Cola*, 624 F.2d 1182; *But see Iowa Beef Processors* 597 F.2d 1138, 1145.

permitted to evade its responsibilities with impunity. Permitting pre-arbitration injunctions against strikes that are clearly in violation of a contractual no-strike clause, *Buffalo Forge*, 428 U.S. at 431 (Stevens, J., dissenting), not only permits an employer to have the benefit of his bargain, but is also less destructive of the goals of national labor policy.

The decision of the Fifth Circuit in the *United States Steel Corp.* v. *United Mine Workers*, 519 F.2d 1236, relied upon by the appellate court in this case unequivocally exposes the fallacy of denying an employer injunctive relief. There, the Fifth Circuit observed that the employer faced with a politically motivated strike always had the option of disciplining its work force for failure to work. Acknowledging that such conduct would precipitate further strikes, the Court intimated that such strikes over discipline would then be arbitrable strikes, implying that at that point injunctive relief could be obtained. It need hardly be argued that encouraging an employer to discharge workers in order to precipitate further strikes is flatly at odds with federal labor policy which encourages the peaceful resolution of industrial disputes.

The restriction of availability of other arguably more drastic remedies against strikes in violation of contractual no-strike clauses, *see Carbon Fuel*, 444 U.S. 212 (1979) and *Complete Auto Transit*, 49 U.S.L.W. 4473 (1981), seemingly reflects the Courts' understanding, consistent with the view of the *Boys Markets* Court, that pre-arbitrable injunctive relief poses virtually no threat to the continued stability of labor-managament relations. This is particularly true where arbitration is ordered to be conducted on an expedited basis. *Buffalo Forge*, 428 U.S. at 431 (Stevens, J., dissenting). *See, e.g., American Telephone & Telegraph Co.* v. *Communications Workers*, 75 L.R.R.M. 2178 (S.D.N.Y. 1970) (Frankel, J.).

Permitting injunctive relief in a case of this sort, moreover, should not result in a flood of litigation involv-

ing the federal courts in countless preliminary injunction matters. The predictability which would be afforded by an affirmation of the employer's right to seek judicial enforcement of a no-strike pledge could in fact lessen the number of strikes in violation of no-strike clauses, and keep such cases out of the courts. Furthermore, requiring the district court to determine whether the strike is "clearly in breach" of the no-strike clause involves only a threshhold determination of arbitrability, and not necessarily a decision on the merits of the underlying arbitrable dispute. 428 U.S. at 431 & n.27 (Stevens, J., dissenting).[20]

Judicial enforcement of collective bargaining agreements has become increasingly one-sided. The courts, for example, have readily enforced an employer's obligation to arbitrate disputes, even in certain situations where the grievance arises after the termination on the collective bargaining agreement creating the duty to arbitrate. *Nolde Brothers, Inc.* v. *Local No. 358, Bakery and Confectionery Workers*, 430 U.S. 243, *rehearing denied*, 430 U.S. 988 (1977); *United Steelworkers* v. *Fort Pitt Steel Casting*, 635 F.2d 1071 (3d Cir. 1980), *petition for cert. filed*, 49 U.S.L.W. 3727 (March 16, 1981) (No. 80-1564); *Federated Metals Corp.* v. *United Steelworkers*, No. 80-

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[20] A similar limitation on the potential involvement of federal courts exists in cases in which unions seek temporary injunctions against employer conduct in arguable breach of some provision of the collective bargaining agreement. Conditioning such relief on a clear affirmation on the part of the employer to maintain the status quo regarding the matter in question, pending arbitration, is no more difficult than perusing a contract to determine whether the strike at issue is in violation of a no-strike clause. *See Amalgamated Transit Union, Division 1384* v. *Greyhound Lines*, 550 F.2d 1237 (9th Cir.), *cert. denied*, 434 U.S. 837 (1977). *See Cantor*, 1980 Wisc. L. Rev. at 269-70. *See also United Steelworkers* v. *Fort Pitt Steel Casting*, 598 F.2d 1273 (3d Cir. 1979); *Texaco Independent Union* v. *Texaco, Inc.*, 452 F. Supp. 1097 (W.D. Pa. 1978). *See generally* Smith, 44 U. Chi. L. Rev. at 346-47.

1606 (3d Cir., April 28, 1981), *as printed in* [1981] Daily Lab. Rep. (BNA) E-1 (May 8, 1981). Underlying such decisions, as the Third Circuit observed in *Federated Metals*, is the perception that encouraging the strong federal policy favoring arbitration requires that doubts as to arbitrability be resolved in favor of arbitration, even if the arbitration clause at issue is a narrow one, where the subject matter of a particular grievance is arbitrable. *Id.* at E-2-3. The courts, however, have not shown the same willingness to require, even during the term of a contract, unions to live up to the key promise they make in a collective bargaining agreement, *viz.*, the no-strike pledge, even where such enforcement would serve the identical policy of furthering arbitration.

The result reached by the Fifth Circuit below requires reassessment of *Buffalo Forge*. Its impact is increasingly one of denying an employer effective enforcement of a no-strike pledge, contrary to the objectives of national labor policy. Combined with the ineffectiveness of other remedies, an employer is left, in a case like this one, with no recourse whatsoever. Particularly in the case of a purely political dispute completely unrelated to the purposes of the Norris-LaGuardia Act, Occidental submits that Congress plainly did not intend such a result.

CONCLUSION

Petitioners respectfully pray that this Court reverse the decision of the court of appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of May, 1981, three copies of the foregoing Brief For Petitioners were mailed by first class United States mail, postage prepaid, to the following persons. I further certify that all parties required to be served have been served.

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No. 80-1045

IN THE

Supreme Court of the United States

October Term, 1980

JACKSONVILLE BULK TERMINALS, INC., HOOKER CHEMICAL CORPORATION, and OCCIDENTAL PETROLEUM CORPORATION,

Petitioners,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS

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Questions Presented

1. Whether a suit by an employer under section 301 of the Labor Management Relations Act to enforce the no-strike clause of a collective bargaining agreement is a "case involving or growing out of [a] labor dispute" within the meaning of Section 4 of the Norris-LaGuardia Act?

2. Whether a federal court has jurisdiction to enjoin a work stoppage prior to arbitration where the matter over which the union is striking is not subject to the grievance and arbitration clause of the collective bargaining agreement?

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BRIEF FOR RESPONDENTS

Introduction

Respondents submit this brief, pursuant to Rules 34(2) and 35(2) of the Rules of this Court in response to the briefs filed by petitioners and by the Solicitor General as amicus curiae.[1]

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[1] References to the Appendices to the Petition for Certiorari herein are designated: "—— a"; to the Joint Appendix: "J.A. at ——"; to the appendix to respondents' brief: "App. at ——"; to petitioners' brief: "Pet. at ——" and to the brief of the Solicitor General: "Amicus at ——."

Statement of the Case

The decision of the United States Court of Appeals for the Fifth Circuit for which review has been granted is reported *sub nom. New Orleans Steamship Association* v. *General Longshore Workers, ILA*, at 626 F.2d 455 (5th Cir. 1980) and is reproduced at 1a *et seq.* The Fifth Circuit reversed the decision of the District Court for the Middle District of Florida, Jacksonville Division, and vacated a preliminary injunction which had enjoined respondents prior to arbitration from refusing to load cargo destined for the Soviet Union. 29a *et seq.*

In response to the invasion of Afghanistan by the U.S.S.R., Respondent, International Longshoremen's Association, AFL-CIO ("ILA") adopted a resolution[2] that its

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[2] The resolution was announced by ILA President Thomas W. Gleason on January 9, 1980, in the following statement:

"In response to overwhelming demands by the rank and file members of the Union, the leadership of the ILA today ordered immediate suspension in handling all Russian ships and all Russian cargoes in ports from Maine to Texas and Puerto Rico where ILA workers are employed.

"This order is effective across the board on all vessels and all cargoes. Grain and other foods as well as high valued general freight. However, any Russian ship now in process of loading or discharging at a waterfront will be worked until completion.

"The reason for this action should be apparent in light of international events that have affected relations between the U.S. & Soviet Union.

"However, the decision by the Union leadership was made necessary by the demands of the workers.

"It is their will to refuse to work Russian vessels and Russian cargoes under present conditions of the world.

"People are upset and they refuse to continue the business as usual policy as long as the Russians insist on being international bully boys. It is a decision in which the Union leadership concurs."

By telegrams dated April 24, 1981 and June 5, 1981 the ILA has recommended to its members that they resume handling goods to and from Russia.

members would not handle any cargo bound to or coming from the Soviet Union or carried on Russian ships. The resolution was inspired by the overwhelming sentiment of the rank and file longshore union members. The refusal to handle covered all ports on the East and Gulf coasts.[3] It

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[3] The ILA's response to the invasion of Afghanistan has given rise to several cases in addition to the case at bar. The following actions were commenced under § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185: *New Orleans Steamship Ass'n* v. *International Longshoremen's Ass'n*, 486 F. Supp. 409 (E.D. La. 1980), *aff'd in part and vacated and remanded in part*, 626 F.2d 455 (5th Cir. 1980); *Hampton Roads Shipping Ass'n* v. *International Longshoremen's Ass'n*, 631 F.2d 282 (4th Cir. 1980), *petition for cert. filed*, (No. 80-1058); *John W. McGrath Corp.* v. *Atlantic Coast District, International Longshoremen's Ass'n*, 80-CV-150 (N.D.N.Y. Mar. 6, 1980). (This unreported opinion is reproduced as an appendix to this brief. App. at 1 *et seq.*). *Carolina Shipping Company* v. *Local Union 1422, International Longshoremen's Ass'n*, Civil Action No. 80-0873-1 (D. S.C. May 7, 1980) (unreported).

The following proceedings were brought for preliminary injunctions under § 10(*l*) of the LMRA, 29 U.S.C. § 160(*l*), by various Regional Directors of the National Labor Relations Board: *Baldovin* v. *International Longshoremen's Ass'n*, Civil Action No. H-80-259 (S.D. Tex. Feb. 15, 1980); *aff'd*, 626 F.2d 445 (5th Cir. 1980); *Mack* v. *International Longshoremen's Ass'n*, CV 480-051 (S.D. Ga. Feb. 22, 1980), *rev'd, sub nom. Baldovin* v. *International Longshoremen's Ass'n*, 626 F.2d 445 (5th Cir. 1980); *Walsh* v. *International Longshoremen's Ass'n*, 488 F. Supp. 524 (D. Mass. 1980), *vacated and remanded with instructions to dismiss on grounds of res judicata*, 630 F.2d 864 (1st Cir. 1980).

The following private action for damages under LMRA § 303, 29 U.S.C. § 187, the antitrust laws, and admiralty tort, was commenced: *Allied International, Inc.* v. *International Longshoremen's Ass'n*, 492 F. Supp. 334 (D. Mass. 1980) *rev'd*, 640 F.2d 1368 (1st Cir. 1981), *petition for cert. filed*, 49 U.S.L.W. 3763 (April 3, 1981) (No. 80-1663).

In addition, unfair labor practice charges for violation of the secondary boycott proscriptions of LMRA § 8(b)(4), 29 U.S.C. 158(b)(4), are presently pending before the NLRB in: *International Longshoremen's Ass'n (Allied Int'l Inc.)* Case No. 1-CC-1753; *International Longshoremen's Ass'n (Occidental Chemical Company)* Cases No. 10-CC-1141-1, -2, -3 & 4; and *International Longshoremen's Ass'n (Kansas Farm Bureau)* Cases No. 23-CC-764-1 -2, -3 & 4.

was directed exclusively against Soviet goods and ships. It did not spring from any dispute with ILA employers or their customers, whom union members continued to service as usual except with respect to Soviet trade. No coercive or retaliatory action was taken against ILA employers or other firms which continued to do business with the Soviets.

The union action vis-à-vis the U.S.S.R. had a dual aspect. It was a public manifestation of the ILA's disapproval of the Soviet invasion of Afghanistan and at the same time a decision in conscience by longshoremen to abstain from dealing with the aggressor nation out of sympathy for its victims. The Fifth Circuit recognized this two-fold aspect:

> [T]he union's desire to voice a political protest *and* to avoid giving aid and comfort to a nation whose policies it considers inimical.
>
> *Baldovin, supra,* 626 F.2d at 447 (emphasis supplied.)[4]

The events which precipitated this litigation are as set forth by petitioners. Pet. at 3-4. Respondent Local 1408, ILA refused to load for petitioner Jacksonville Bulk Terminals, Inc. (JBT) superphosphoric acid bound for Russia under an agreement between Occidental Petroleum Corporation (Occidental) and the Soviets, and petitioners commenced this action under LMRA §301.

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[4] The First Circuit, too, recognized the conscientious nature of the ILA action, when it suggested that a union might find it "repugnant" to handle the goods of any employer with whom it had a dispute. *Allied International, supra,* 640 F.2d at 1375. All courts have recognized that the union's motivation was purely altruistic, inspired by patriotic concerns and the opposition to aggression. *Hampton Roads Shipping Ass'n, supra,* 631 F.2d at 282; *Walsh, supra,* 630 F.2d at 866; *Allied International, supra,* 640 F.2d at 1369; *New Orleans Steamship Ass'n,* 626 F.2d at 459; *Baldovin,* 626 F.2d at 447; *Allied,* 492 F. Supp. at 338; *Walsh,* 488 F. Supp. at 526; *New Orleans Steamship Ass'n,* 486 F. Supp. at 411; *McGrath,* App. at 3, 4; *Jacksonville Bulk, supra,* 32a. Such matters are traditionally within the realm of conscience. *See United States* v. *Seeger,* 380 U.S. 163 (1965).

The district court held that the underlying dispute in this case was not a "labor dispute," and thus the prohibition of Norris-LaGuardia Act §4, 29 U.S.C. §104, did not apply. It issued an injunction against the work stoppage and simultaneously granted specific performance of the arbitration provisions of the collective bargaining agreement. 35a. Contrary to petitioners' present contention, however, the district court in its opinion, found that

> [O]ther than the work stoppage, there appears to be no dispute at all between plaintiffs and defendants. Defendants' underlying objections are *not to the policies of their employer,* but to the political policies of a foreign nation. (emphasis supplied). 32a.

The Fifth Circuit agreed that the union's refusal to service Russian cargo was not motivated "by any dispute with any employer members" and "nothing that these employers might do could have eliminated the cause of the boycott." *New Orleans Steamship Association, supra,* 626 F.2d at 459. In reliance upon this Court's holding in *Buffalo Forge Co.* v. *United Steelworkers of America, AFL-CIO,* 428 U.S. 397 (1976), the court of appeals held that respondents' underlying dispute with the Soviet Union could not be processed under the arbitration clause of the collective bargaining agreement, although the resulting dispute as to whether the unions' action in response to the nonarbitrable dispute violated the no-strike clause might be arbitrable. *New Orleans Steamship Association,* 626 F.2d at 467. The Fifth Circuit recognized that the underlying dispute "was purely a political protest," *Id.* at 459, but rejected the notion that the resulting, arbitrable dispute over violation of the no-strike clause was not a labor dispute within the meaning of the Norris-LaGuardia Act. *Id.* at 465. It held that no injunction could issue prior to a determination by the arbitrator. *Id.* at 469.

Summary of Argument

An action under LMRA §301 by an employer against a union representing its employees to enforce a no-strike pledge falls within the prohibition of §4 of the Norris-LaGuardia Act against the granting of injunctions in labor disputes by federal courts. Such a case by its very nature involves a labor dispute. In situations like that of this case, all courts have recognized that two controversies are involved. The underlying dispute, which may or may not be political, is not arbitrable, nor is it the subject of the litigation. What the court is asked to enjoin is the refusal to provide labor which gave rise to a second dispute over whether there has been a violation of the no-strike clause. This is quintessentially a labor dispute. Cases in which the courts attempted to define the term "labor dispute" but which were not between the employer and the union to compel the furnishing of labor are completely irrelevant.

Petitioners' basic premise, that §301 involves a grant of jurisdiction to enforce collective bargaining agreements which is broader than the bar of Norris-LaGuardia, has been considered by this Court and, in light of the legislative history of §301, expressly rejected. The Fifth Circuit, as well as the Fourth, correctly followed precedent in holding that an employer's attempt to invoke the no-strike clause against the ILA action involves a labor dispute.

A pre-arbitration injunction under *Boys Markets Inc.* v. *Retail Clerks Union*, 398 U.S. 235 (1970) cannot be issued in this case. This case falls squarely under the rule enunciated by this Court in *Buffalo Forge, supra.* The underlying dispute between the ILA and the Soviet Union over the invasion of Afghanistan is not subject to the provisions of any employer's collective bargaining agreement. It cannot be resolved by arbitration. The resulting dispute, whether the union's action in response to the nonarbitrable dispute violates the no-strike clause, may be arbitrable. However,

under the holding in *Buffalo Forge,* expressly rejecting the position of the dissent, no injunction can issue prior to arbitration.

Whether opposing parties characterize the second dispute as being between the union and the employer over management's right to select customers or to assign work, the fact remains that what petitioners seek to enjoin is an alleged violation of the no-strike clause. Their position flies in the face of what has been recognized by every court, that the *underlying* dispute here is not between the union and the employer and so is not subject to arbitration.

The policy arguments raised by petitioners do not justify reversal of the Fifth Circuit's decision. *Buffalo Forge* itself is an accommodation of the anti-injunction policy of Norris-LaGuardia to the policy favoring arbitration. It enforces the promise to arbitrate, but it refuses to alter it so as to transfer to a district court the decision which the collective bargaining agreement reserves to the arbitrator. The fact that there are political connotations to the ILA's expression of dissent and adherence to conscience cannot justify a departure from ordinary principles of law. Congress has not seen fit to enact any general prohibition of political strikes. Because the refusal to perform work was not over an issue subject to the arbitration clause, the fact that political issues may be involved in the motivation does not warrant special treatment.

The accusation that the ILA was interfering with United States foreign policy is both false and irrelevant. No treaty, law, or regulation mandates any American citizen to do business with a foreign nation, even where such trade is permitted. The ILA's action sought only to regulate its own conduct in the private sphere, not that of other persons and not the policy of the government. Since it was not shown to violate any lawful prohibition, it could not be enjoined.

ARGUMENT

I.

This Case Involves a Labor Dispute Within the Meaning of the Norris-LaGuardia Act.

Federal courts have no jurisdiction to issue injunctions "in any case involving or growing out of any labor dispute" Norris-LaGuardia Act §4, 29 U.S.C. §104.[5] The intent of this statute was "[to take] the federal courts out of the labor injunction business." *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365, 369 (1960). This Court has held that the Act "must not be read in a spirit of mutilating narrowness," *United States* v. *Hutchison*, 312 U.S. 219, 235 (1941), and has consistently "refused to give the Act narrow interpretations that would have restored many labor dispute controversies to the courts." *Marine Cooks and Stewards, supra*, 362 U.S. at 369.[6]

A. *An Action to Enforce a No-Strike Clause in a Collective Bargaining Agreement Involves a Labor Dispute.*

The dispute presented for adjudication in this case fits comfortably within the statutory definition of a labor dispute. Despite petitioners' dissembling, the dispute sub judice concerns the ultimate term and condition of employment: whether, under the circumstances, any labor is required by the collective bargaining agreement between the parties. Whatever its genesis, this case by its terms *involves* a labor dispute between the union and the employer of its members.

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[5] Among the activities which may not be enjoined is "ceasing or refusing to perform any work or to remain in any relation of employment. . . ." 29 U.S.C. § 104(a).

[6] As defined by the Act: "the term 'labor dispute' includes any controversy concerning terms or conditions of employment. . . ." 29 U.S.C. § 113(c).

Indeed, federal jurisdiction is predicated solely on LMRA §301(a), which gives federal courts jurisdiction over "suits for violation of contracts between an employer and a labor organization." The relief sought is an injunction not against the ILA's ire with the Soviets but against its refusal to perform work. The employer claims that the union's response to its dispute with the Soviets violates its promise not to strike during the term of the contract. This disagreement over whether the no-strike clause has been violated stems from the ILA's dispute with the U.S.S.R. However, it is the contract dispute, the meaning of a clause in the collective bargaining agreement, not the political dispute, which the arbitrator will determine and on which the courts are asked to rule. As this Court has said, "The Act does not concern itself with the background or the motives of the dispute." *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552, 561 (1937).

Petitioners try to avoid Norris-LaGuardia's clear prohibition by a tactic of confusion. In Point I of their brief they focus on the underlying dispute with the Soviet Union, ignoring the alleged breach of contract which they seek to enjoin, and they argue that the dispute here is "political" and so not covered by Norris-LaGuardia. In Point II, in order to concoct an arbitrable dispute, they maintain the ILA's dispute is with its members' employer, as though the U.S.S.R. were not involved.

A proper analysis of the case requires the recognition of both disputes. There is not a single controversy which allows petitioners Janus-like to turn for the Court's inspection the visage convenient to its particular argument at the moment. There are two related, but conceptually distinct, disputes: one between the ILA and the Soviets over the invasion of Afghanistan, a second between the ILA and the employer over the latter's claim that its no-strike clause is being violated.

In *Buffalo Forge*, this Court explicitly recognized that this kind of situation gives rise to two separate disputes.[7] It held that, although the underlying issue was not arbitrable, a second dispute was generated as to "whether the sympathy strike violated the Union's no-strike undertaking." 428 U.S. at 410.[8] With respect to the ILA's action in the instant case, not only the Fifth Circuit but also the Fourth Circuit and the United States District Court for Northern District of New York had no difficulty in identifying the two disputes involved. *Hampton Roads Shipping Association, supra*, 631 F.2d at 285. *McGrath, supra* at A7.

This litigation is over the second kind of dispute. Petitioners seek to enjoin an alleged violation of the no-strike clause, not an alleged violation of the ILA's "legal obligations" to the U.S.S.R. As in *Buffalo Forge*, if the collective bargaining agreement did not contain a no-strike clause, petitioners would have no basis for their lawsuit. Petitioners cannot avoid the ban of Norris-LaGuardia by focusing on the political dispute to which they are not a party and by disregarding the labor dispute which they recognize exists by their own assertion that their labor contract is being violated.

B. *Petitioners' Arguments for the Inapplicability of Norris-LaGuardia Are Without Merit.*

Petitioners' basic fallacy is their assumption that the §301 authorization to federal courts to grant injunctions is broader than the Norris-LaGuardia ban. This contention is untenable in the light of the legislative history of §301 and has been expressly rejected by this Court on at least two occasions.

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[7] Even before this Court made the matter crystal clear in *Buffalo Forge*, other courts had recognized that, where a union whose collective bargaining agreement had a broad no-strike clause struck over an issue not covered by its arbitration clause, a second, independent dispute was created. *See* page 15 below.

[8] The application of the holding in *Buffalo Forge* to the facts in this case is discussed in Point II.

The Senate Report on §301 recognized that the Norris-LaGuardia Act would bar injunctive relief to enforce collective bargaining agreements. *See Sen. Rep.* No. 105, 80th Cong., 1st Sess. 1947, p. 17. Congress demonstrated with respect to other sections of the Act that it knew how to lift the bar of Norris-LaGuardia when it wished to do so.[9] Indeed, the House version contained a provision that the Norris-LaGuardia Act would not apply to §301 actions, §302(e) H.R. 3020, 80th Cong., 1st Sess. 1947, but it was deleted before the Act was adopted. *See Conference Committee Report, Labor Management Relations Bill,* 1947, H.R. 302, 80th Cong., 1st Sess. June 3, 1947.[10]

In light of this history, this Court has held that the jurisdictional grant to federal courts in §301 to enforce collective bargaining agreements is no broader than the jurisdictional denial to federal courts in Norris-LaGuardia to enjoin labor disputes. In *Buffalo Forge,* the Court expressly reiterated and approved Mr. Justice Black's statement in *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195 (1962).

> [T]here is no general federal anti-strike policy; and although a suit may be brought under §301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail. 370 U.S. at 225.

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[9] *See, e.g.,* 29 U.S.C. § 160 (unfair labor practices); § 178(b) (injunctions during national emergency); § 186(e) (restrictions on financial transactions).

[10] The Senate also considered removing the Norris-LaGuardia bar to enforcing collective bargaining agreements by injunction by the device of making breach of a collective bargaining agreement an unfair labor practice. Unfair labor practices may be enjoined under LMRA § 10, 29 U.S.C. § 160, which is expressly exempt from the Norris-LaGuardia Act. This, too, failed to pass. Section 8(b)(5), § 8(a)(6), S.1126, 80th Cong. 1st Sess. introduced April 17, 1947.

The Court specifically addressed the proposition on which petitioners herein rely, saying:

> Nor was the injunction authorized solely because it was alleged that the sympathy strike called by the Union violated the express no-strike provision of the contracts. Section 301 of the Act assigns a major role to the courts in enforcing collective-bargaining agreements, but aside from the enforcement of the arbitration provisions of such contracts, within the limits permitted by Boys Markets, the Court has never indicated that the courts may enjoin actual or threatened contract violations despite the Norris-LaGuardia Act. In the course of enacting the Taft-Hartley Act, Congress rejected the proposal that the Norris-LaGuardia Act's prohibition against labor-dispute injunctions be lifted to the extent necessary to make injunctive remedies available in federal courts for the purpose of enforcing collective bargaining agreements. *Buffalo Forge*, supra 428 U.S. at 409.

The cases cited by petitioners in their attempt to argue that the Norris-LaGuardia Act does not apply to this case are inapposite. Petitioners conveniently forget that this case is between an employer and a union for specific performance of a labor contract. They cite authority from other areas of law, not involving direct suits between the employer and the union, in which the courts attempted to define the term "labor dispute." These are irrelevant to the dispute between the parties to this action, which is in its essence a labor dispute.[11]

Similarly, the appellate authority relied on by petitioners for their argument that the Fifth Circuit erred in applying Norris-LaGuardia to the dispute here is inapplicable to this case. *Khedival Line* v. *Seafarers' International Union*, 278

[11] Petitioners insist that the existence of a "labor dispute" depends upon the presence of "the employer-employee 'matrix'" Pet. at 12. The plaintiff in this action *is* the employer; the defendant is the union representing the employees.

F.2d 49 (2d Cir. 1960) and *NLRB* v. *International Longshoremen's Association (Ocean Shipping)*, 332 F.2d 992 (4th Cir. 1964) were not §301 suits by employers to require the furnishing of labor under collective bargaining agreements. In *Khedival* the plaintiff was a foreign shipowner which sought to enjoin a picketing union invoking the court's admiralty jurisdiction. *Ocean Shipping* was an unfair labor practice proceeding brought by the National Labor Relations Board to terminate an alleged secondary boycott. In such cases an analysis of the dispute between the union and a third party may be necessary to determine whether it is a "labor dispute" for purposes of Norris-LaGuardia. The analysis is unnecessary where, as here, the case by its very nature involves a labor dispute.

The only two applicable cases cited by petitioners, *West Gulf Maritime Association* v. *International Longshoremen's Association*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd without opinion*, 531 F.2d 574 (5th Cir. 1976) and *Harrington & Co.* v. *International Longshoremen's Association*, 356 F. Supp. 1079 (S.D. Fla. 1973), have been thoroughly discredited. Both cases were decided prior to *Buffalo Forge*. Both failed to distinguish between the underlying and resulting disputes. Both hold that no labor dispute is involved but anomalously go on to grant specific performance of a promise not to withhold labor. *West Gulf Maritime Association* cites no authority except *Harrington & Co.* *Harrington & Co.* cites no authority at all. In the decision under review, the Fifth Circuit expressly renounced its earlier affirmance of *West Gulf Maritime Association* and adhered to its prior decision in *United States Steel Corp.* v. *United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975), *rehearing denied*, 526 F.2d 376 (1976), *cert. denied*, 428 U.S. 910 (1976).[13] Other than *West Gulf* and *Harrington*, peti-

[13] This Court cited *United Mine Workers* as "in accord" with the the Second Circuit's holding which it affirmed in *Buffalo Forge*. 428 U.S. at 404 n.9. Thus, the Court implicitly agreed with the Fifth Circuit that the dispute in *United Mine Workers* was a "labor" dispute within the bar of Norris-LaGuardia.

tioners can cite no case where an action directly between the employer and the union over their contract has been held not to involve a labor dispute within the prohibition of Norris-LaGuardia.[13]

II.

The *Boys Markets* Exception to the Norris-LaGuardia Act Does Not Apply to This Case.

A. *Under* Buffalo Forge *a Court May Not Issue a Pre-arbitration Injunction Unless the Strike Is Over an Arbitrable Dispute.*

In 1970 this Court recognized a narrow exception to Norris-LaGuardia's blanket prohibition against the issuance of labor injunctions by federal courts. *Boys Markets, supra.* It held that, where a dispute arises over a matter which the parties have agreed to arbitrate, federal courts may enjoin work stoppages and require arbitration of that dispute.[14]

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[13] Petitioners are equally in error when they claim that the decision below is alone in holding that a politically motivated work stoppage falls within Norris-LaGuardia. On the contrary, the Fifth Circuit had reached the same conclusion in the *United Mine Working* case, *supra*, as had the Fourth Circuit in *Armco Steel Corp.* v. *United Mine Workers*, 505 F.2d 1129 (4th Cir. 1974), *cert. denied*, 423 U.S. 877 (1975), where the union's grievance which precipitated the strike concerned state and federal regulations on the allocation, distribution and sale of gasoline. Moreover, with respect to the facts of this very case, not only the Fifth Circuit but also the Fourth, and the District Courts in New Orleans, Hampton Roads and Albany have viewed this case as falling under *Boys Markets/Buffalo Forge*. These holdings have meaning only if Norris-LaGuardia applies. *Hampton Roads Shipping Association, supra*, 631 F.2d at 284, 285; *New Orleans Shipping Association, supra*, 486 F. Supp. at 413; *McGrath, supra*, App. at 7-11.

[14] The only injunction at issue is one granted *prior* to arbitration. Once the arbitrator has ruled, federal courts may enforce his decision without the bar of Norris-LaGuardia. *Steelworkers* v. *Enterprise Corp.*, 363 U.S. 593 (1960); *Buffalo Forge, supra*, 428 U.S. at 405.

The Court has been careful to point out that *Boys Markets* is a "narrow" exception.[15] The purpose of a *Boys Markets* injunction is not to grant specific performance of some substantive provision of the contract. That is exactly what Norris-LaGuardia prohibits. Rather, the purpose is to protect the arbitrable process by enforcing the union's pledge to arbitrate instead of strike over the substantive issue. *Buffalo Forge, supra,* 428 U.S. at 411. It follows that there can be no *Boys Markets* exception to Norris-LaGuardia unless the dispute *over* which the union is striking is one that it has agreed to submit to arbitration.

After *Boys Markets,* the courts of appeals divided on the question of whether a strike was enjoinable when it was over a grievance which the union had not agreed to arbitrate.[16] In *Buffalo Forge* an employer whose employees were engaged in a sympathy strike in support of another union not a party to their collective bargaining agreement sought a preliminary injunction prior to arbitration. This Court granted certiorari to resolve the conflict among the circuits as to whether a district court could enjoin a strike over a dispute not subject to the arbitration clause of the union's collective bargaining agreement "pending the arbitrator's decision as to whether the strike is forbidden by the express no-strike clause. . . ." *Id.* at 399. The majority prohibited such injunction, saying:

> *Boys Markets* plainly does not control this case. The District Court found, and it is not now disputed, that the strike was not *over* any dispute between the Union

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[15] *Boys Markets, supra,* 398 U.S. at 253; *Buffalo Forge, supra,* 428 U.S. at 403, 406.

[16] The Third, Fourth and Eighth Circuits were of the view that, even if the underlying dispute was not arbitrable, the question of violation of the no-strike clause was itself an arbitrable issue which permitted a *Boys Markets* injunction. The Second Fifth and Sixth Circuits held that no injunction could issue unless the underlying dispute fell within the arbitration clause. *Buffalo Forge,* 428 U.S. at 404 n.9 (1976).

> and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; . . . Thus, had the contract not contained a no-strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike in this case. (citations omitted.) *Id.* at 407, 408.

The Court's denial of a pre-arbitration injunction did not end the controversy. Having found that the underlying dispute was not arbitrable, it identified a second dispute engendered by the first—whether the union's action in response to the nonarbitrable dispute violated the express no-strike clause of the agreement. *Id.* at 409, 410. The Court held that this issue involved "the meaning and application of a no-strike clause" which, under the broad arbitration clause, was itself subject to arbitration. *Id.* at 405, 410. However, the Court held that the question whether the sympathy strike violated the no-strike clause was for the arbitrator, not the courts, to decide. *Id.* It ruled that, while the union might be ordered to arbitrate, the district court was without power to enjoin the strike pending the decision of the arbitrator. *Id.* at 412, 413.

> [I]t does not follow that the District Court was empowered not only to order arbitration but to enjoin the strike pending the decision of the arbitrator, despite the express prohibition of §4(a) of the Norris-LaGuardia Act. . . .
>
> If an injunction could issue against the strike in this case, so in proper circumstances could a court enjoin any other alleged breach of contract pending the exhaustion of the applicable grievance and arbitration provisions even though the injunction would otherwise violate one of the express prohibitions of §4. *Id.* at 410.

Boys Markets permits a pre-arbitration injunction not because the court is convinced that the union is breaching its contract but because the union has elected to strike over, rather than to arbitrate, a matter it has clearly promised to arbitrate. In the *Buffalo Forge* situation it can never be said that the union is striking over the issue whether the no-strike clause is being violated. It is not, therefore, striking over an arbitrable issue.[17]

B. *The Court of Appeals Correctly Held That* Buffalo Forge *Applies to This Case.*

Every criterion which led this Court to find that the underlying dispute in *Buffalo Forge* was not arbitrable applies equally to the underlying dispute in this case.

"The union has gone on strike not by reason of any dispute it or any of its members has with the employer." Buffalo Forge, 428 U.S. at 404, 405. Three courts of appeals and six district courts have held that the underlying dispute is between the ILA and the Soviet Union, not between the union and its employers. See pp. 25-27 below.

"The strike was not over any dispute between the union and the employer that was even remotely subject to the

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[17] Consequently, after *Buffalo Forge,* the courts of appeals have been unanimous in holding that, where the underlying dispute over which the union is striking is not arbitrable, a preliminary injunction may not be granted prior to arbitration of the issue whether the no-strike clause has been violated. *NLRB* v. *C.K. Smith & Co.,* 569 F.2d 162 (1st Cir. 1977); *Corporate Printing Co.* v. *New York Typographical Union Number 6,* 555 F.2d 18, 20 (2d Cir. 1977); *Latrobe Steel Co.* v. *United Steelworkers,* 545 F.2d 1336, 1341 (3d Cir. 1976); *Cedar Coal Co.* v. *United Mineworkers,* 560 F.2d 1153, 1169 (4th Cir. 1977); *Jacksonville Maritime Association, Inc.* v. *International Longshoremen's Association, AFL-CIO,* 571 F.2d 319, 325 (5th Cir. 1978); *Walker Bros. Stone Co.* v. *United Steelworkers, AFL-CIO,* 620 F.2d 132 (6th Cir. 1980); *NLRB* v. *Keller-Crescent Co.,* 538 F.2d 1291, 1295 (7th Cir. 1976); *National Rejectors Industries* v. *United Steelworkers of America,* 562 F.2d 1069, 1075 (8th Cir. 1977); *J.A. Jones Construction Co.* v. *Plumbers and Pipefitters Local 598,* 568 F.2d 1292 (9th Cir. 1978).

arbitration provisions of the contract." Id. at 407. Clearly the imperialistic designs of the Soviet Union were not within the contemplation of the parties when they agreed to the broad arbitration clause in their collective bargaining agreement. Indeed, the underlying dispute in the case at bar is even further removed from the arbitration clause than was the underlying dispute in *Buffalo Forge*, for there the employer had the actual power to settle with the sister union, whereas here neither JBT nor even Occidental can affect the Soviet Union's military policy.

"The strike at issue was a sympathy strike. . . ." Id. The courts are in agreement that the strike here is in the nature of a sympathy strike over issues not between the parties to the collective bargaining agreement.[18] In all its critical elements, the ILA action is indistinguishable from a classic sympathy strike in support of another union. Its motivation is purely altruistic, not calculated to gain the striking union any economic benefit or advantage. The union refused to service Russian goods or ships out of *sympathy* for the oppressed people of Afghanistan. Indeed, it may be said that longshoremen were honoring a symbolic picket line raised by the oppressed victims of the Soviets. The Afghan pickets may be prevented from appearing by the Russian aggressors, but they are present in spirit wherever the Soviets manifest themselves. Out of sympathy, longshoremen would not cross the picket line to offer even indirect aid to the Russian war machine.

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[18] The district court in *McGrath, supra*, recognized the sympathetic nature of the ILA action, when it compared "the case at bar and similar litigation involving similar sympathy strikes, including other litigation involving the ILA's refusal to service . . . the Soviet Union." App. at 12. *Cf. Allied, supra*, 640 F.2d 1372 n.3. It should be noted, however, *Buffalo Forge* is not limited to sympathy strikes but to any work stoppage occasioned by a nonarbitrable dispute. *Hampton Roads, supra*, 631 F.2d at 286; *United States Steel Corp. v. United Mineworkers*, 519 F.2d 1236 (5th Cir. 1975), *cert. denied*, 428 U.S. 910 (1976). This Court cited *Mineworkers* in *Buffalo Forge*, thus dispelling the suggestion that only sympathy strikes were intended to be covered. 428 U.S. at 404, n.9.

"Neither its causes nor the issue underlying it was subject to the settlement procedures provided by the contracts between the employer and respondents." *Buffalo Forge*, 428 U.S. at 407, 408. Manifestly, there is nothing for an arbitrator to determine with respect to the union's grievance against the Soviet Union. (*See* pp. 23-24, *infra*) As the Fifth Circuit recognized "[N]o arbitrator can tell the Soviets to withdraw from Afghanistan." *New Orleans Steamship Association*, 626 F.2d at 467. The Solicitor General agrees that submitting this dispute to arbitration would be "an absurdity." Amicus at 22.

"The strike had neither the purpose nor effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain." *Buffalo Forge*, 428 U.S. at 408. Since the underlying dispute with the Soviets is not subject to arbitration, the union's work stoppage cannot be an evasion of the duty to arbitrate. Nor is the employer deprived of its bargain because, by its terms, this particular dispute does not fall within the agreement to arbitrate.[19]

Applying these criteria the court below held:

> While the question of whether the strike itself violated the parties' agreement is arbitrable, the underlying dispute between the ILA and the Soviet Union is not. *New Orleans Steamship Association, supra*, 626 F.2d at 467.

In a related case involving the same ILA action, *Hampton Roads Shipping Association, supra*, the Fourth Circuit expressed a similar understanding of *Buffalo Forge*.

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[19] Petitioners confuse the issue by claiming that the employer is deprived of his bargain to be free of strikes. (Pet. at 7, 9, 27-30). That is not the bargain the Court was referring to in *Buffalo Forge*. Rather, it was the agreement to *arbitrate*. Petitioners beg the question, for the premise they assume—that the work stoppage over a nonarbitrable dispute deprives them of their bargain to be free of strikes—is the very issue to be *arbitrated*. Petitioners merely espouse the former view of the Third, Fourth and Eighth Circuits, which this Court soundly rejected in *Buffalo Forge*. *See* p. 15, *supra*.

> If the underlying dispute is not subject to contractual grievance and arbitration proceedings, it is not arbitrable, and under *Buffalo Forge* the work stoppage cannot be enjoined pending arbitration. The work stoppage may still be prohibited by a general no-strike clause, but this must be decided initially by the arbitrator. The Supreme Court in *Buffalo Forge* explicitly stated that a work stoppage cannot be enjoined during pendency of that arbitration.
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> The grievance the Union has against the Soviet Union is clearly not arbitrable. Therefore, the only clause of the collective bargaining agreement that may have been violated by the Union in this dispute is the no-strike clause. The questions of its arbitrability and whether it prohibited the work stoppage are both for the arbitrator. It was error under the circumstances of this case to issue an injunction prior to completion of arbitration. *Hampton Roads Shipping Association, supra,* 631 F.2d at 285, 286.

C. *The Underlying Dispute in This Case Is Not Over "Management Rights."*

Faced with the clear holding of *Buffalo Forge,* petitioners and the Solicitor General seize upon the device of placing the label of arbitrability on what is manifestly a dispute with the Soviet Union. They try to characterize the *underlying* dispute in this case so as to bring it within the arbitration clause. They do not agree on what the underlying dispute is, but they are sure it is "arbitrable." Unable to state a convincing case for his particular characterization, each falls back on the "presumption of arbitrability" to justify a pre-arbitration injunction. Pet. at 25; Amicus at 23.

Petitioners characterize the underlying dispute in this case as between the union and employer "prompted by an

arbitrable dispute between the parties" over the "union's disapproval of Occidental's decision to choose the Soviet Union as a business partner", a decision petitioner labels a "management right". Pet at 8.

To call this a "management rights" dispute is merely to reach for a convenient label. What petitioners seek to enjoin is the union's refusal to work. Any intrusion on "management rights" would be by way of violating the no-strike clause. If the collective bargaining agreement did not contain a no-strike clause, none could be implied, for the union never agreed to arbitrate its underlying dispute. There may be an arbitrable dispute as to whether striking over a nonarbitrable dispute violates management's prerogative, but *Buffalo Forge* clearly holds that no injunction can issue until the arbitrator rules. 428 U.S. at 408.

The ILA action was directed against the Soviet aggressors, not against any American employer. The longshoremen did not say to their employers, "You may not do business with Russia." They said to the Soviets, "You may not have the benefit of our labor while engaged in aggression." The fact that the union did not refuse to handle the non-Soviet goods of persons dealing with Russia disproves the existence of any intent by the union to dictate the employer's choice of customers. "[E]ven where the American entities have diverted ships from ports where the ILA work stoppage is effective to ports where it has been enjoined, . . . avoiding the ILA work stoppage," the union has continued to service the employers. *Baldovin, supra,* 626 F.2d at 452.

D. *The Underlying Dispute in This Case Is Not Over "Work Assignment."*

Like petitioners, the Solicitor General attempts to manufacture an underlying arbitrable dispute over "management rights" so as to avoid the plain dictates of *Buffalo Forge.* Whereas petitioners invoke management's right to choose its customers, the Solicitor General postures the dispute as

over "work assignment" or "cargo handling." Amicus at 11, 22, 23.[20] In an attempt to achieve a desired result, the Solicitor General distorts both facts and the law.

The lengths to which the Solicitor General must go to arrive at the construct that there is an arbitrable dispute are shown by his introduction of the novel doctrine of *several* underlying disputes, all of which are the supposed "proximate cause[s]" of the refusal to work. Amicus at i, 20. Even this fancy semantic footwork cannot obscure the plain and irrefutable fact that the seminal event was the Soviet invasion of Afghanistan. This is what prompted the Union's refusal to handle Soviet goods.[21]

The ultimate test of the Solicitor General's theory is to apply it to the facts of *Buffalo Forge*. There, as here, it would have been possible to characterize the dispute in terms of management's right to assign and direct work.[22]

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[20] Petitioners seem to have half-heartedly made the same argument in their complaint to the district court. (Complaint, ¶ 24-27, JA at 9, 10) The district court did not accept it. It was not urged by petitioners in the court of appeals or to this Court, where they choose to emphasize selection of customers.

[21] The Solicitor General is correct in including the previous dispute between the U.S.S.R. and Afghanistan in the chain of events, just as in *Buffalo Forge* the dispute between the employer and the sister union was the event which evoked the striking union's sympathy. As in *Buffalo Forge*, where sympathy for others was the cause of the union's action, so here ILA's sympathy for the Afghans and its outrage with the Russians precipitated all that followed. It is possible to describe *all* intervening events as "underlying" the ultimate event. What *Buffalo Forge* requires is that *the* underlying dispute, the matter *over* which the union strikes, not the intermediate events, be arbitrable.

[22] In fact, the employer in *Buffalo Forge* made a claim in the district court very similar to that of the Solicitor General here. In addition to its allegation of breach of the no-strike clause, it also claimed in the alternative that the strike was caused by "refusal to follow a supervisor's instructions to cross the . . . picket line." *Buffalo Forge, supra*, 428 U.S. at 401. The district court, however, found that the strike was in sympathy for the sister union and was not over a dispute that the parties were contractually bound

Indeed, every strike can be characterized in terms of work assignment, for the essence of a strike is to refuse work. Every refusal to cross a picket line can be expressed in terms of work direction, for the significance of not crossing the line is that one will not accept work on the other side. Thus, the dispute in *Buffalo Forge* could be cast in the same terms that the Solicitor General urges here. The union's dispute could be said to have been with its employer over the employer's right to assign the union work while its sister union was on strike. So viewed, the strike in *Buffalo Forge*, or any strike for that matter, could be said to be over an arbitrable dispute, and "the policy of Norris-LaGuardia virtually obliterated." *Buffalo Forge, supra*, 517 F.2d at 1211.

The Solicitor General's attempt to characterize this dispute as one over work assignment flies in the face of all the facts. The union never claimed that handling Russian cargo would be undue hardship or "an unreasonably burdensome condition"; it claimed it would be *wrong*. The union's objection had nothing to do with the nature of the work or the cargo involved; it had to do with the ultimate beneficiary. The union was not striking *over* its right not to accept work; it was striking out of sympathy

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to arbitrate. *Id.* at 409, 410. The "work assignment" argument was not pressed in the subsequent appeals. *See Buffalo Forge, supra*, 517 F.2d at 1211, n.7.

The claim of the employer in *Buffalo Forge* was far stronger than the Solicitor General's, for it did not rely on mere characterization of breach of the no-strike clause as a refusal to accept a work assignment. It relied instead upon a specific instance where an actual individual refused to obey orders. The district court after a hearing held that the work stoppage came about "because of the direction of the International Union to members of the Defendant Locals to respect the picket lines. . . .," *Buffalo Forge, supra*, 386 F. Supp. at 409, not over a failure to obey work orders. The employers in *Buffalo Forge* did not go on to advance the untenable argument made here, that such a strike was over a general refusal to obey a work assignment rather than over a nonarbitrable dispute.

for Afghanistan. It was not attempting to force JBT to allow it not to handle Russian goods; it was striking to express sympathy and moral indignation. Most important, it cannot be said here that the union was trying to force the employer to yield on a disputed issue. The Solicitor General's suggestion that the union decided "to call a strike rather than run the risk of losing in arbitration," Amicus at 26, is pure nonsense. The very issue of the union's right to strike will—and must—be arbitrated under *Buffalo Forge*. It is absurd to say that the union struck so as to avoid arbitrating whether it has to do the work, since that is the very issue which must be decided by the arbitrator under the no-strike clause.

The key to *Buffalo Forge* is that a union is not striking *over* any dispute it had promised to arbitrate, which is evidenced by the fact that, even under the broadest arbitration clause, there is nothing for the arbitrator to resolve. 428 U.S. at 407-08. Under the Solicitor General's theory, presumably an arbitrator could say that, on the basis of some "hardship", the union was permitted to refrain from handling Russian goods.[23] Such a ruling would hardly redress the union's real concern. The occupation of Afghanistan would persist. The arbitrator would only be permitting the union to continue to protest its real grievance. He would not be resolving it.[24]

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[23] That the Solicitor General is merely disguising the issue in *Buffalo Forge* is evident from the fact that such a ruling would say no more than that the union is free to strike. It is but another way of saying there is no violation of the no-strike clause—the arbitrable, but second, dispute recognized by *Buffalo Forge* and held there not to warrant a pre-arbitration injunction.

[24] The arbitration cases cited by the Solicitor General, Amicus at 22, are completely inapplicable to the case at bar. First, the fact that both sides voluntarily agreed to arbitrate the work assignment issue without objection is no authority that it would be *required* to be arbitrated under the contract. The Solicitor General cites no case dealing with that question. Second, none of the cases cited involves a strike by the entire union, only refusals to accept a particular as-

Thus, the Solicitor General's attempt to find an underlying arbitrable dispute over "work assignment" is as unavailing as petitioners' attempt to find an underlying arbitrable dispute over "choice of customers." Each reaches for a convenient label and disregards the realities.

E. *The Underlying Dispute Here Is With the Soviets.*

Despite the Procrustean attempts to fit the underlying dispute in this case into the language of some express provision of the collective bargaining agreement which might be arbitrable, there has never been any real doubt that the underlying dispute is between the ILA and the U.S.S.R. over a matter unconnected with the contract. Petitioners' attempt to characterize it as a dispute with the employer, improvised on by the Solicitor General, was rejected by both the trier of fact and the reviewing court in this case, and by every other court which has addressed the ILA/Soviet dispute.

The district court in this case expressly disagreed with petitioners' characterization of the underlying dispute. It found:

> [O]ther than the work stoppage, there appears to be no dispute at all between plaintiffs and defendants. Defendants underlying objections are not to the poli-

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signment by one, two or at most three individuals. Violations of a no-strike clause, by whatever name, are simply not involved. Third, each case involved the propriety of employer discipline against the recalcitrant individual. Here, the employer cannot and has not tried to discipline the entire union. Fourth, in each instance the arbitrator could grant real relief to either of the contesting parties. He could uphold the discipline, or he could order the employer to rearrange work assignments or schedules to accommodate the individual. Fifth, the individual who refused a work assignment did not do so in response to some other, nonarbitrable dispute. His only dispute was with the employer. He could be satisfied by being relieved of the obligation to obey the employer's direction. Here, the ILA did not want to avoid work; it wanted to express sympathy with the Afghans.

> cies of their employer, but to the political policies of a foreign nation. *Jacksonville Bulk, supra,* at 32a.

The Fifth Circuit likewise expressly rejected it.

> The union's grievance is not, as asserted by JBT, a complaint against JBT doing business with the Soviets. It is a complaint against the actions of the U.S.S.R. itself. The union seeks to deny the Soviets the benefit of the labor of its members as long as that nation is engaged in what the union considers aggression. *New Orleans Steamship Association, supra,* 626 F.2d at 467.

Other courts which have considered the same dispute concur. The Fourth Circuit has ruled:

> The underlying cause of the Union's grievance in this case was their disagreement with the Soviet Union over its invasion of Afghanistan. *Hampton Roads Shipping Association, supra,* 631 F.2d at 285.

The United States District Court for the Eastern District of Louisiana found:

> The work stoppage in this case was not a result of a dispute with the employer but was a political protest against the Soviet invasion of Afghanistan. *New Orleans Steamship Association, supra,* 486 F. Supp. at 411.

The United States District Court for the Northern District of New York said:

> There are two disputes here, one with the Russians—the basis of the union's refusal to work; the other with management over the union's right to refuse to work. *McGrath supra.* (App. at 7).

Similarly, in the cases arising from charges that the ILA's action violates the prohibition on secondary boycotts

of LMRA § 8(b)(4), the courts have unanimously found that there is no dispute between the union and its employers. In sustaining a complaint under LMRA § 303, 29 U.S.C. § 187, alleging a secondary boycott, the First Circuit determined that there was no primary dispute between the ILA and its employers. *Allied International, supra,* 640 F.2d at 1377.

The District Court for the District of Massachusetts said:

> This is a primary boycott of Russian goods, with incidental effects upon those employers who deal in such goods. *Walsh, supra,* 488 F. Supp. at 531.

In *Baldovin, supra,* the District Court for the Southern District of Texas, dismissed a petition for a preliminary injunction under LMRA § 10*(l)* on the grounds that the dispute was not "in commerce." Since the underlying dispute was not in commerce, it could not have been between the ILA and an employer of ILA labor. On the other hand, the District Court for the Southern District of Georgia in *Mack, supra,* granted a § 10*(l)* injunction based on a secondary boycott charge. *See Baldovin* v. *ILA, supra.* Implicit in the granting of the injunction was a recognition that the union's dispute is not with its employers. *See Baldovin, supra; Walsh, supra.*

Thus, there is overwhelming judicial agreement that the underlying dispute in this case is between the ILA and with the Soviets and is not covered by any collective bargaining agreement.

F. *Petitioners and the Solicitor General Urge the Position of the Dissent in* Buffalo Forge.

Petitioners and the Solicitor General, like the employer in *Buffalo Forge,* argue that the question of violation of the no-strike clause is arbitrable and that, under the policy favoring arbitration, a preliminary injunction should issue. Pet. at 25, 29-30, Amicus at 21, 25. This was, of course, the

very position of the dissent in *Buffalo Forge*. *Id.* at 431-32. It was soundly rejected by the majority.

> The dissent suggests that injunctions should be authorized in cases such as this at least where the violation, in the court's view, is clear and the court is sufficiently sure that the parties seeking the injunction will win before the arbitrator. But this would still involve hearings, findings, and judicial interpretations of collective-bargaining contracts. It is incredible to believe that the courts would always view the facts and the contract as the arbitrator would; and it is difficult to believe that the arbitrator would not be heavily influenced or wholly preempted by judicial views of the facts and the meaning of contracts if this procedure is to be permitted.
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> With these considerations in mind, we are far from concluding that the arbitration process will be frustrated unless the courts have the power to issue interlocutory injunctions pending arbitration in cases such as this or in others in which an arbitrable dispute awaits decision. *Id.* at 412.

Petitioners complain that, in deciding that the underlying dispute was not arbitrable, the Fifth Circuit usurped the function of the arbitrator. Pet. at 27. Whenever a court is faced with an application for a pre-arbitration injunction, it is required to make some ruling as to the arbitrability of the underlying dispute. That minimal decision is thrust on it by the plaintiff. This Court has repeatedly recognized such responsibility in the courts. *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 228 (1962) (Brennan, J. dissenting); *Boys Markets, supra*, 398 U.S. at 254; *Buffalo Forge, supra*, 428 U.S. at 406-07. Although the court must "presume" the dispute is arbitrable, that presumption may be rebutted. In the instant case, where nine different United States courts have agreed that the underlying dis-

pute is not subject to arbitration, the presumption has clearly been rebutted. Since the underlying dispute here is not arbitrable, the Fifth Circuit correctly reversed the granting of a pre-arbitration injunction.

III.

Policy Considerations Do Not Warrant Reversal of the Fifth Circuit's Decision.

A. *There Is No Federal Policy Prohibiting Political Strikes.*

Petitioners suggest that the political connotations of the underlying dispute remove this case from ordinary labor law considerations and subject it to a supposed "anti-political strike" policy.

The ILA's action was not strictly speaking a political strike. The refusal to work was not accompanied by an intent to influence public policy.[25] Longshoremen sought to control only their own conduct. They asked no one else to boycott the U.S.S.R. Without any practical hope of deterring Soviet aggression, they expressed disapproval of that policy, seeking only to refrain from contributing to the well-being of the aggressor out of sympathy for its victims, even at considerable financial sacrifice.

Petitioners cite no authority for their general proposition that there is a policy against political strikes. *See* Pet. at 19-22. None of their cases stands for the proposition that political strikes are forbidden per se. Rather, each case involved an alleged violation of a particular statutory

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[25] *Cf. Missouri* v. *NOW, supra.* In *NOW,* pressure was brought to bear on the state legislature to affect its political decision whether or not to ratify the Equal Rights Amendment. 620 F.2d at 1302. Such activity, which was vindicated by the courts, partakes deeply of the political. The ILA action in this case, inspired not by political, but by moral values, does not seek to affect the Legislature or the Executive but only to express disapproval and vindicate conscience. *See also Henry* v. *First National Bank, supra.*

prohibition, and the issue was whether the political nature of the conduct absolved the participants from what would otherwise have been unlawful activity.[26] The decisions do not even remotely suggest that, absent the finding of a violation, the activity would be prohibited simply because it was political.

When these cases are read in the light of the First Amendment, there is no prohibition on political strikes or boycotts unless the conduct involved violates some specific provision of public or private law.

If there is to be a general policy against political strikes, it should come from Congress.[27] In the absence of legislation, the courts should not create such a policy either directly or by indulging in fictions designed to predetermine the outcome by manipulating the law or the facts. The Fifth Circuit correctly decided this case on labor law principles, recognizing that the touchstone of the *Buffalo Forge*

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[26] *Eastex* v. *NLRB*, 437 U.S. 556 (1978), dealt with the question of whether the participating employees enjoyed the protection of NLRA § 7, 29 U.S.C. § 157. The same is true of *Auto Workers Local 174* v. *NLRB*, 106 LRRM 2561 (D.C. Cir. March 3, 1981). The cases cited at Pet. 21 involved the question whether a particular issue was a mandatory subject of bargaining under NLRA § 8(b), 29 U.S.C. § 158(b). The First Circuit decision in *Allied International, Inc., supra*, involved the claim of secondary boycott and antitrust violations.

[27] "Congress may, under its constitutional power to regulate commerce among the several states, attempt to prevent political strikes and other kinds of direct action designed to burden and interrupt the free flow of commerce." *American Communications Association* v. *Douds*, 339 U.S. 382, 390-91 (1950); *see also, United States* v. *Brown*, 381 U.S. 437, 450 (1965). This does not suggest that Congress has *exercised* that power. In *Douds*, the Court upheld the constitutionality of LMRA § 9, which required union officers to sign a non-Communist oath, on the ground that Communist motivated political strikes were a threat "which it was the purpose of § 9(h) of the Act to remove." *Id.* at 388. Obviously, if political strikes in general were unlawful, this reasoning would not have applied. The possibility of lawful political strikes was again recognized in 1965 in *Brown*.

doctrine is the nonarbitrability of the underlying dispute and not its political nature.

B. *The Decision Below Furthers the Federal Policy Favoring Arbitration of Labor Disputes.*

Throughout their brief, petitioners complain that the Fifth Circuit's decision undermines the longstanding policy favoring arbitration. Pet. 6, 8, 25-27, 30-31. Petitioners' desire to arbitrate their dispute with respondents is belied by the fact that, since February 1, 1980, they have had an order requiring respondents to arbitrate the alleged violation of the no-strike clause. However, for sixteen months petitioners have failed to go to arbitration. The tears they shed for the sanctity of the arbitrable process have a decidedly crocodilian flavor.

Be that as it may, the majority decision in *Buffalo Forge* and the decision below actually foster the arbitration process while accommodating the equally strong policy of Norris-LaGuardia of keeping federal courts out of the labor injunction business. *Buffalo Forge* fully enforces the parties' agreement to arbitrate. However, it prohibits the issuance of a pre-arbitration injunction based on the court's view of the merits of the case. The parties have agreed that interpretation of the contract is for the arbitrator, not the courts. "They have not contracted for a judicial preview of the facts and the law." 428 U.S. at 411. Because the court's finding would be likely to influence the arbitrator's decision, 428 U.S. at 412, and a pre-arbitration injunction is likely to be dispositive of the controversy, the policy of promoting arbitration would be subverted, not served, by any other course. Id.[18] Adoption of petitioners' position that a union may be enjoined from striking over

[18] The present case is a prime example of how a pre-arbitration injunction may be dispositive of the controversy. Having obtained an injunction, petitioners had achieved their purpose and never went to arbitration, arguing to the Fifth Circuit that the case was moot. *See New Orleans Steamship Association, supra*, 626 F.2d at 461-62; Plaintiff-Appellees' Brief in *New Orleans Steamship Association, supra*, dated February 28, 1980, Point I.

an issue which cannot be arbitrated would deter unions from entering into broad no-strike/arbitration clauses. The Solicitor General's approach of labeling as "underlying" or "arbitrable" a dispute in which arbitration can give the union no redress would have a chilling effect on labor's willingness to give up its economic weapon in return for a meaningless formality.

C. *Petitioners Do Not Lack Alternative Remedies.*

Petitioners' claim that the Fifth Circuit's decision deprives an employer of any remedy for an alleged breach of its collective bargaining agreement is misleading and begs the question. Whether petitioners are entitled to any remedy depends upon their rights under the contract.[29] They have bargained to have this decided by the arbitrator not the courts. All that petitioners have been deprived of is relief *prior* to adjudication in the agreed upon forum. Petitioners still have the remedy for which they contracted; the arbitrator will decide the issue and grant the appropriate relief.[30]

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[29] Petitioners assume that they will be successful on the merits of their claim that the no-strike clause has been violated. However, the outcome is far from certain. While one cannot—and, indeed, should not—predict how an arbitrator *may* rule with respect to a particular contract, the weight of judicial authority goes against petitioners. Both the First and Third Circuits, as well as the National Labor Relations Board have taken the position that a work stoppage over a nonarbitrable dispute does *not* violate even a broad no-strike clause. *NLRB* v. *C.K. Smith & Co., Inc.*, 569 F.2d 162 (1st Cir. 1977), *cert. denied*, 436 U.S. 957 (1978); *United Steelworkers* v. *Fort Pitt Steel Casting*, 635 F.2d 1071 (3d Cir. 1980), *petition for cert. filed*, 49 U.S.L.W. 3727 (March 16, 1981); *Delaware Coca-Cola Bottling Co.* v. *General Teamster Local Union 326*, 624 F.2d 1182 (3d Cir. 1980); *Pacemaker Yacht Co.*, 253 N.L.R.B. 95 (1980). *Contra, Iowa Beef Processors, Inc.* v. *Amalgamated Meat Cutters*, 597 F.2d 1138 (8th Cir.), *cert. denied, Amalgamated Meatcutters* v. *Iowa Beef Processors, Inc.*, 444 U.S. 480 (1979).

[30] That the courts and the NLRB have found that other remedies are unavailable after a determination on the merits, *see* cases cited at Pet. 32, 39-42, is irrelevant to the question of whether petitioners' collective bargaining agreement gives them the right to a preliminary injunction here.

D. *Respondents Have Not Interfered With United States Foreign Policy.*

Petitioners' argument, belatedly concurred in by the Solicitor General,[31] that the Fifth Circuit's decision permits the ILA to interfere with the foreign policy of the United States overlooks one critical fact. In this country, as opposed to the Soviet Union, citizens are free to act in a manner inconsistent with the policy of the Executive Branch unless and until it can be shown that their conduct violates some treaty, law or valid regulation.

Respondents do not deny that the Executive has primary responsibility for foreign policy or that President Carter's embargo represented what the Executive Branch believed to be the appropriate *governmental* response to Soviet aggression. This does not mean that, within the law, there is not room for private action as well. It does not mean that private citizens are precluded from coming to their own conclusions. That foreign policy permits the Bolshoi Ballet to perform in this country does not require any American to buy tickets. That there was no embargo on the importation of vodka and caviar does not make them

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[31] The position of the Solicitor General in this Court is slightly more appealing than the stance taken by the Executive Branch in the litigation below. In both the district court and the court of appeals, as well as in several other cases arising out of the same ILA action, the Government declined to take "any position on the merits" but openly announced the result it wished the courts to reach. See brief of the United States as amicus curiae dated July, 1980, pp. 1-5, *Jacksonville Bulk Terminals Inc.* v. *International Longshoremen's Association (New Orleans Shipping Association)*, *supra*. This attitude, if taken by a private litigant, would result in short-shrift being given to his claim. In this Court the Solicitor General finally takes a position on the merits, but he appears not on behalf of any agency with an interest in the correct application of the labor laws but on behalf of the Departments of State and Agriculture, whose only interest, as repeatedly expressed, is that the ILA be enjoined, no matter what the merits of the case. This may explain why the Solicitor General's stand on the labor law issues ranges from his obvious, sensible position that the case does involve a Norris-LaGuardia labor dispute to the fanciful proposition that there are a litter of underlying disputes.

staples of the American diet. So, too, that President Carter forbade certain trade with the Soviets does not mean that he *mandated* all other trade or that any particular person in the United States must do business with Russia.

In fact, the ILA action in this case did not infringe upon American foreign policy. The District Court for the District of Louisiana put the matter correctly:

> The determination of this country's foreign policy is also not at issue. That is a matter for the Executive and Legislative Branches of Government.
>
> The sole issues to be determined are matters of contract. *New Orleans Shipping Association, supra,* 486 F. Supp. at 412.[32]

Neither the Solicitor General nor petitioners can point to any violation of public law—only to an alleged breach of a private contract.[33]

In a totalitarian state a citizen fails to tow the party line at his peril. It is not so here. As long as the ILA acts within the law, it may regulate its own conduct as it

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[32] The Fourth Circuit refused to allow the question as to the propriety of the ILA action to play any part in its adjudication of the labor law issues. *Hampton Road Shipping Association, supra,* 631 F.2d at 285. The district court in the case at bar, however, believed that the opposition of the Administration was "perhaps the most important factor in this determination," 34a, despite the Administration's refusal to offer a position on the merits.

[33] The treaty authorizing the sale of grain to the Soviet Union which was submitted to the court of appeals (Brief of the United States As amicus curiae filed July, 1980, Addendum C) states in Article I that the U.S.S.R. shall purchase grain from "private commercial sources" and that the United States shall "facilitate and encourage such sales by private commercial sources." Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialists Republics On The Supply of Grain, October 20, 1975, 26 U.S.T. 2972. Thus, the treaty merely establishes that it is the policy of the United States to *encourage* such sales. It should not be read as *requiring* private parties to participate therein in violation of their consciences.

wishes.[34] To the extent, then that foreign policy is urged as a ground for disregarding the law or bending the facts of this case, it is an argument more suited to Occidental's customer and unworthy of the Solicitor General. If there is a danger, as suggested by the Solicitor General, Amicus at 26, n.17, that other nations (especially those with no tradition of citizens' rights) may view a court's determination of private rights as "an extension of United States foreign policy," that is no reason to adopt the totalitarian approach. Rather, the application of the law by independent courts, unswayed by irrelevant considerations of politics or expediency, might well be an export to the Soviets that even the ILA would applaud—a lesson in freedom.

CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the Fifth Circuit should be affirmed.

Dated: July 16, 1981

Respectfully submitted,

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[34] That longshoremen occupy an important position in the stream of commerce can be no reason—absent a valid law—for denying them rights possessed by all citizens. If American grain producers yielded to their consciences rather than their pocketbooks and, as private businessmen, declined to deal with the Soviets, would anyone seriously argue that they could be required to do so?

APPENDIX

APPENDIX

Memoradum-Decision and Order

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

80-CV-150

JOHN W. McGRATH CORPORATION,

Petitioner,

—v.—

ATLANTIC COAST DISTRICT ILA and Affiliated Local #1294, its Officers, Agents and Members,

Respondents.

APPEARANCES:

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Appendix—Memorandum and Order

MEMORANDUM-DECISION AND ORDER

This is a petition for an order compelling performance of an agreement to arbitrate pursuant to the provisions of a Labor-Management Contract between petitioner and respondent. The petitioner also seeks injunctive relief pending arbitration. Petitioner is a New York Corporation doing business as a stevedore in the Port of Albany, New York. Respondent is a labor organization with its principal place for transaction of business in the City of Albany, New York.

Petitioner (McGrath) and respondent (Union) entered into an agreement concerning performance by respondent's members of labor for petitioner's activities in the Port of Albany. This "General Cargo Agreement", provided for the respective obligations of the parties in connection with loading and unloading of cargos and the rigging of ships in the Port of Albany, Rensselear and vicinity.

The Agreement governs the means by which McGrath obtains labor for its stevedore activities in the Port of Albany and contains the following pertinent arbitration clauses: (emphasis supplied)

GENERAL CARGO AGREEMENT

Pg. 1

> The Union shall have the right to select one member apart from the regular gangs to represent the membership during ship operations. He shall be among the first men to be hired and the last to be discharged. He shall be empowered to correct any unsafe working condition that may be brought to his attention. He shall handle any dispute between the parties and resolve such disputes at the pier level. When such

disputes cannot be resolved at the pier level, *he shall present them for arbitration through the Arbitration and Grievance machinery,* and see that *there is no stoppage of work while such disputes are being arbitrated,* except that to continue to work may endanger the lives of the men, then the dispute shall be immediately adjusted by the parties. He shall see that all of the terms of this agreement are faithfully carried out by both parties. He shall have the right to consult with other officers on the job if any deviation to any condition herein is to be considered.

• • •

11. GRIEVANCE AND ARBITRATION:

(a) Any dispute or controversy which may arise as to interpretation or application of any of the provisions of this agreement, including all matters herein which expressly provide that they shall be dealt with in accordance with this Clause, shall be referred to an Arbitration Committee for adjustment or decision, as provided for herein. *Pending such adjustment or decision, the men shall continue to work.*

The facts leading up to the present dispute are as follows:

On February 8, 1980, the grain vessel AENEAS berthed at the McGrath facility in Albany for the purpose of taking on a shipment of grain for export to the U.S.S.R. When McGrath personnel ordered labor to work the ship, the Union refused to supply such labor. The refusal is part of a national policy adopted by affiliated locals of the International Longshoremen's Association to refuse to load grain on ships bound for Russia as a protest against

the recent Soviet invasion of Afghanistan. Pursuant to the conditions and terms of the agreement, McGrath served a demand for arbitration on the Union on Friday afternoon, February 8, 1980. The demand indicated that McGrath sought arbitration of the alleged breach of the agreement by the refusal of the Union to provide labor for the ship AENEAS. On Monday, February 11, 1980, the Union notified McGrath that it refused to arbitrate.

McGrath's petition requests the court to compel arbitration and to enjoin and restrain the union in refusing to service the AENEAS as any other vessel carrying cargo to and from the Soviet Union.

A

Jurisdiction on this Court is conferred by Title 29 U.S.C. § 185 and Title 28 U.S.C. § 1331. The motion to compel arbitration is made pursuant to the Federal Arbitration Act Title 9 U.S.C. paragraph 4.

It is McGrath's contention that the refusal of the Union to work the AENEAS is covered by Section 11 of the Agreement as a "dispute or controversy" which has arisen "as to interpretation or application of . . . the provisions of this agreemnt" which "shall be referred to an arbitration committee for adjustment or decision". McGrath further contends that the last sentence of paragraph 11 which provides that "pending such adjudication or decision the men shall continue to work" is in the nature of a no-strike clause and based thereon seeks injunctive relief pending arbitration. McGrath also contends that the language set forth in the body of the agreement (Pg. 1) as to the obligations of the Union representative that "he shall handle any dispute between the parties and resolve such disputes on the pier level, he shall present them for arbi-

tration through the arbitration and grievance machinery, and see that there is no stoppage of work" is further basis for the relief sought herein.

McGrath concedes that the Union's decision to refuse to load grain bound for Russia, as a means of expressing its displeasure with the Soviet aggression in Afghanistan, is not in the nature of a dispute with management over the terms and conditions of the agreement, but contends that the Union's manner of implementation of the decision, i.e., the stoppage of work in order to carry out that decision, does involve a 'ispute covered by the agreement. McGrath says that the right of management to compel the Union to work as against the right of the Union to refuse work is a dispute and as such is subject to arbitration.

The Union concedes that it is bound under the terms of the agreement to arbitrate a dispute between McGrath and itself as to the terms or conditions of the contract, but contends that there is no dispute with McGrath herein but rather with the Soviets and that that dispute is not arbitrable. It asserts that what we have here are two disputes—the first, and the basis for its refusal to work, is its disagreement with the Russian aggression; the second, its disagreement with McGrath over its right to so refuse.

B

It has, of course, been affirmatively established that the arbitration of labor disputes is highly favored. In *United States Steel Workers of America* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960), the Supreme Court articulated the desirability of the arbitration of differences between labor and management:

> The present federal policy is to promote industrial stabilization through the collective bargaining agreement. A major factor in achieving industrial peace is the inclusion of provision for arbitration of grievances in the collective bargaining agreement. . . . Here arbitration is the substitute for industrial strife . . . arbitration of labor disputes under the collective bargaining agreements is part and parcel of the collective bargaining process itself . . . 363 U.S. at 578 (citations omitted).

The Court went on to discuss the processes afforded by the Labor Law when it stated:

> The Congress, however, has by Section 301 of the Labor Management Relations Act, assigned the Courts the duty of determining whether the reluctant party has breached his promise to arbitrate. For arbitration is a matter of contract and a party cannot be required to submit to an arbitration any dispute which he has not agreed so to submit. Yet, to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under Section 301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or did agree to give the arbitrator power to make the award he made. An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." 363 U.S. at 582-583.

In *United Steel Workers* the Court further observed that the question of arbitrability is for the courts to decide.[1]

The question here, therefore, is whether there is a dispute covered by the agreement which should be submitted to arbitration pursuant to the terms of the agreement. When a dispute is not one which the parties agree to arbitrate, there can be no requirement to arbitrate and no injunction. *Gateway Coal Co.* v. *Mine Workers,* 414 U.S. 368, 380, 94 S.Ct. 629, 38 L.Ed.2d 583 (1974).[2]

C

There are two disputes here, one with the Russians—the basis of the Union's refusal to work; the other with management over the Union's right to refuse to work. It is clear that the parties to this labor-management contract did not agree to arbitrate the former. Did they agree to arbitrate the latter?

The Union concedes that if there was a broad no-strike clause in the contract, then its right to strike to enforce its position on the first (Russian) dispute would be subject to arbitration, but in the absence of such a clause, the Union claims it is not subject to arbitration.

It claims these distinctions were set forth and recognized by the Supreme Court of the United States in *Buffalo*

---

[1] "Where the assertion by the claimant is that the parties excluded from court determination not merely the decision of the merits of the grievance but also the question of arbitrability, vesting power to make both decisions in the arbitrator, the claimant must bear the burden of a clear demonstration of that purpose." 363 U.S. 583, Footnote 7.

[2] "No obligation to arbitrate a labor dispute arises solely by operation of law. The law requires a party to submit his grievance to arbitration only if he has contracted to do so." 414 U.S. 368, 373.

Forge Co. v. *United Steel Workers of America, AFL-CIO*, 428 U.S. 397, 96 S.Ct. 3141 (1976), wherein the Court observed:

> ". . . the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it was subject to the settlement procedures provided by the contract between the employer and the respondents. The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain. Thus had the contract not contained a no-strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike in this case." (citation omitted) 428 U.S. at 407, 408.

It should be noted that in *Buffalo Forge* the agreement contained a "no-strike clause" and the Supreme Court held that the issue of whether or not that clause covered a sympathy strike was arbitrable, that is, whether or not the broad no-strike clause covered any and all stoppage of work whether related to disputes with management or not. Insofar as the underlying dispute, the Supreme Court adopted the reasoning and decision of the Second Circuit and found that it was not arbitrable. The Second Circuit had held "the strike at issue in the instant case is not over a grievance with *Buffalo Forge*, but instead is simply a manifestation of the striking workers deference to other

employees' picket lines." (517 F.2d 1207 at 1210, 2d Cir. 1975), and further observed:

> a strike not seeking to pressure the employer to yield on a disputed issue is not an attempt to circumvent arbitration machinery established by collective bargaining agreement. Accordingly, it does no violence to the federal pro-arbitration policy to require federal courts to refrain from enjoining such strikes. *Buffalo Forge Co., supra,* 428 U.S. at p. 1211 (citations omitted).

In this the Court of Appeals affirmed the District Court, which had refused to issue an injunction precisely because the underlying dispute was not arbitrable. *Buffalo Forge Co.* v. *United States Steel Workers of America, AFL-CIO,* 386 F.Supp. 405 (W.D.N.Y. 1974).

D

McGrath alleges, in connection with the ILA's nationwide refusal to load grain ships for Russia as a protest against the Soviet invasion of Afghanistan, that similar disputes in the Ports of Houston, New Orleans, Jacksonville, Norfolk and Philadelphia have been submitted to arbitration and that arbitrators in those cases have unanimously found against the Union, and that other District Courts have uniformly issued restraining orders preventing work stoppage. Two District Court cases have been brought to this Court's attention, i.e., *Jacksonville Bulk Terminals, Inc.* v. *ILA* (M.D. Fla., Jacksonville Div., Docket No. 80-81-CV-J-B); and *New Orleans Steamship Association* v. *General Longshoreworkers,* (W.D. La. Docket No. 80-0335). However, it appears that the Labor-Management Agreement in both those cases contained

separate and distinct no-strike clauses. In the Jacksonville case the no-strike clause provided:

> During the term of this agreement, the employer agrees that there shall be no lockout of the members of the Union, and Union agrees that there shall not be any strike of any kind whatsoever, walkout, suspension of work, curtailment, or limitation of production, slow down, or any other interruption or stoppage, total or partial, of the employers' operation for any cause whatsoever. . . . Paragraph 15(b)

In the *New Orleans* case the no-strike clause read:

> (a) No strikes, no lockouts—there will be no strikes, work stoppages or shall there be any lockouts.

The Court in *New Orleans* granted a preliminary injunction against the Longshoremen's Locals preventing any work stoppage in connection with the loading or unloading of grain destined for the Soviet Union. Judge Wicker in her opinion states:

> The Unions contend that the no-strike provisions of the collective bargaining agreements do not forbid work stoppage of a political nature. And since no dispute exists between the employer and the unions, the arbitrators exceeded their authority in ordering the defendant unions to load cargo bound for Russia.
>
> This Court decides otherwise. The collective bargaining agreements in this case contain identical and unequivocal no-strike and no-work stoppage clauses. There are no exceptions to this provision.

The difference between the collective bargaining agreements in the *New Orleans* and *Jacksonville* cases and the

one now before this Court is obvious. In each case, the agreement contained an independent promise by the Union not to strike. The promise was not tied to any pending arbitration. In *Jacksonville* it was for "the term of the agreement"; in *New Orleans*, it was unqualified: "there will be no strikes"; in *Buffalo Forge* it was equally unconditional "there shall be no strikes, etc."

It is significant that the Union agreement in the instant case is not in the form of a separate no-strike clause promising not to interrupt or refuse to work under any and all circumstances, but is an agreement to continue to work once a matter involving interpretation or application of the provisions of the agreement is referred to arbitration for adjustment or decision.

E

A Union can be compelled to arbitrate and be enjoined from striking only because it has agreed to settle its disputes by the former method rather than by the latter. *Boys Markets* v. *Retail Clerks Union*, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed. 2d 199 (1970). The relief is in the nature of specific performance of a promise to arbitrate rather than to strike. However, where, as in the instant case, there has been no such promise, the Court cannot impose these remedies.

Here, the only promise not to strike is expressly while arbitration is pending. If there is nothing to be arbitrated, there is no obligation not to strike. The collective bargaining agreement in the case at bar does not contain any broad, independent no-strike provision whereby the Union has committed itself generally not to strike during the life of the agreement. Rather, the contract provides only that there will be no work stoppages "while such disputes are being arbitrated".

As in *Buffalo Forge*, the grievance by the Union—the Afghanistan invasion—is clearly not within the arbitration clause. To hold that the employer itself could, by simply claiming that the no-strike clause was being violated, create an arbitrable dispute, thus, triggering the no-strike clause would be circular reasoning. As the Second Circuit said in *Buffalo Forge* "if a strike not seeking redress of any grievance is enjoinable, then the policy of Norris-LaGuardia is virtually obliterated." 517 F.2d at 1211. And as the Fifth Circuit observed in *Amstar Corp.* v. *Amalgamated Meat Cutters and Butcher Workmen of North American AFL-CIO*, 468 F.2d 1372 (5th Cir. 1972): "it would be difficult to conceive of any strike which could not be enjoined." 468 F.2d at 1373.

The great difference between the case at bar and similar litigation involving similar sympathy strikes, including other litigation involving the ILA's refusal to service ships bound for the Soviet Union, lies in the collective bargaining agreements themselves. Unlike the situation in other cases, there is here no independent promise by the Union not to strike. There is only a promise to continue work while arbitration is pending, which presupposes an underlying arbitrable issue.

The contract in this case does not contain an unconditional promise not to strike for the term of the agreement. The Union promises only to continue work while arbitration is pending. There is here no underlying dispute as to which arbitration applies. The petition to compel arbitration is denied as is the request for injunctive relief.

IT IS SO ORDERED.

NEAL P. MCCURN
Neal P. McCurn
U.S. District Judge

Dated: March 6, 1980
Syracuse, New York

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No. 80-1045

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION,
Petitioners,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF FOR PETITIONERS

ARGUMENT

I. THE PROTECTIONS OF THE NORRIS-LAGUARDIA ACT SHOULD NOT BE EXTENDED TO INSULATE UNION CONDUCT MOTIVATED BY CONCERNS UNRELATED TO THE UNDERLYING POLICIES OF THAT STATUTE

Both Respondents and the Solicitor General as *amicus curiae* challenge Petitioners' position that this case does not involve a labor dispute within the meaning of the Norris-LaGuardia Act. In so doing, they studiously ignore the background and history of the Act. As demonstrated in Petitioners' principal brief (Pet. Br. 10-16),

the underlying aim of Norris-LaGuardia was to allow labor organizations to pursue the legitimate objectives of obtaining better wages and working conditions. Thus, the Court emphasized in *Marine Cooks v. Panama Steamship Co.*, 362 U.S. 365 (1960):

> The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Congress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed, by unduly restrictive judicial construction.
>
> This congressional purpose, as is well known, was prompted by a desire *to protect the rights of laboring men to organize and bargain collectively* and to withdraw federal courts from a type of controversy for which many believed they were ill-suited and from participation in which, it was feared, judicial prestige might suffer.

362 U.S. at 370 n.7 (citations omitted) (emphasis added). But where a union's conduct is unrelated to legitimate trade union objectives, the protections of the Norris-LaGuardia Act do not apply. *Compare Bakery Drivers* v. *Wagshal*, 333 U.S. 437 (1948) *with Marine Cooks.*

That the Act was designed only to protect workers in their efforts to organize and bargain collectively, is evidenced by those cases in which the Court has intepreted Norris-LaGuardia in conjunction with national antitrust policy. In deciding that the Norris-LaGuardia Act does not protect labor unions when they combine with employers in an effort to restrain trade, the Court has concluded that Congress intended in Norris-LaGuardia to remove from potential antitrust liability only certain "*specifically enumerated* practices of labor unions." *United States v. Hutcheson*, 312 U.S. 219,

230 (1941) (emphasis added). *Accord, H.A. Artists & Associates v. Actor's Equity Association*, 101 S.Ct. 2102, 2108 (1981); *Allen Bradley Co. v. Local 3, IBEW*, 325 U.S. 797 (1945). As the First Circuit said in its discussion of the application of the antitrust laws to the ILA's boycott:

> [T]he principle that emerges from the above cases is that activities are in the self-interest of a labor organization 'if they bear a reasonable relationship to a legitimate union interest. . . .' In particular, the labor exemption has been applied when the union acts to protect the wages, hours of employment, or other working conditions of its member-employees, objectives that are at the heart of national labor policy. We think the district court was correct in concluding that the ILA's 'political dispute' with the Soviet Union does not relate to a 'legitimate union interest' as the term has been defined in American labor history and law.

Allied International, Inc. v. ILA, 640 F.2d 1368, 1380 (1st Cir. 1981) (citation omitted), *cert. granted*, 102 S.Ct. 90 (1981) (No. 80-1663).

In sum, the Court has long recognized that the protection afforded a labor union by Norris-LaGuardia depends on the purpose behind the union's actions. *Allen Bradley Co. v. Local 3, IBEW*, 325 U.S. 797 (1945). Unions are protected only to the extent that their conduct is directed toward obtaining better wages and working conditions.[1] Not surprisingly, Respondents cite no case in which the

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[1] It is noteworthy that Norris-LaGuardia places definite restrictions on the range of protected union activity even where the objective is within the stated policies of the Act. Thus, the Act does not restrict injunctions against "unlawful acts [that] have been threatened and will be committed unless restrained." 29 U.S.C. § 107(a). *Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad*, 353 U.S. 30 (1957). Similarly, union conduct that is violent or fraudulent is outside the Act's protections. *See e.g., Scott v. Moore*, 640 F.2d 708, 714 (5th Cir. 1981).

protections of Norris-LaGuardia have been extended to insulate from the usual process of law union conduct designed to achieve a purely political objective.[2]

That the instant case involves a controversy far removed from the legitimate objectives protected by Norris-LaGuardia is beyond serious question; Respondents have maintained from the start that this boycott was politically motivated. Nonetheless, Respondents assert (Resp. Br. 8) that this case involves a labor dispute insofar as Petitioners and Respondents disagree as to whether the union is required to furnish labor under its collective bargaining agreement. It is obvious that this characterization ignores the reality of the boycott's political motivation. Such a position amounts to an artificial and nonsensical bifurcation of the conduct at issue. *Cf. American Radio Association v. Mobile Steamship Association*, 419 U.S. 215 (1974).

There is no independent "labor dispute" in this case that can be severed from the ILA's politically motivated boycott; there plainly would have been no work stoppage affecting Petitioners had the ILA not decided to boycott Soviet cargo. The ILA would have this Court hold that the protections of the Norris-LaGuardia Act should be extended to conduct wholly unrelated to the objectives of

---

[2] The Solicitor General's contention (S.G. Br. 14-15) that *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1928), supports the extension of Norris-LaGuardia to a politically motivated work stoppage is unfounded. The dispute in that case centered around a demand by a black civic association that a grocery store hire black employees. Understandably, the Court found that demand to be a claim for better working conditions and hence a labor dispute under the Norris-LaGuardia Act. The observation made there that the Act "does not concern itself with the background or the motives of the dispute" means only that an attempt to improve terms and conditions of employment is covered by Norris-LaGuardia, regardless of its motive. *New Negro Alliance* cannot be read, as the Solicitor General and the ILA read it (Resp. Br. 9), as holding that the motive for the ILA boycott is irrelevant.

the Act, so long as an effect of the union's conduct is disruption of an employer-employee relationship. The Court refused to condone such a result in *Allen Bradley*, and there is no reason to do so here. The anomalous result of such a position would be to make the determination of Norris-LaGuardia protection depend upon the success of the disruption rather than the objective of the conduct.

The ILA's argument is also fundamentally inconsistent with other arguments it makes in this case. As discussed below, Respondents adamantly insist that, assuming a labor dispute is found to exist here, injunctive relief under *Boys Markets Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), was improper because the union's "underlying" dispute was with the Soviet Union. While Respondents assert in *that* argument that the "secondary" dispute over the contractual no-strike clause does not permit a pre-arbitration injunction, they blithely rely on that same "secondary" dispute to support their claim in *this* argument that they were engaged in a labor dispute within the meaning of Norris-LaGuardia.[3] The Solicitor General contributes to this confusion by suggesting (S.G. Br. 22) that there are "several underlying" disputes in this case. These inconsistencies are the inevitable result of the ILA's procrustean attempt to fit its conduct within the protection of the Norris-LaGuardia Act.[4]

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[3] Respondent's disingenuousness extends to its theories in *ILA v. Allied International, Inc.*, No. 80-1663 (*cert. granted*, October 5, 1981). In that case, the ILA stoutly insists that its "sole" dispute is with the Soviet Union (Pet. Br. 17), so that there can be no labor dispute within the meaning of Section 8(b)(4) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 158(b)(4).

[4] As established below, the ILA's conduct is properly enjoinable under *Boys Markets* in the event that the Court does determine that a labor dispute exists in this case. This is true because the conduct in which the ILA engaged was intended to restrain Peti-

There are three substantial public policy interests against extending the protections of the Norris-LaGuardia Act to the work stoppage at issue here. As already established (Pet. Br. 19-21), national labor policy recognizes that purely political conduct is not protected by federal labor law. *Eastex, Inc. v. NLRB*, 437 U.S. 556, 570 n.20 (1978).[5] National labor policy protects concerted activity only to the extent that it advances the goal of "mutual aid and protection."[6] Certainly that limitation should be recognized in a case like this, where a union engages in economic action in support of a political objective, particularly one beyond the employer's control. As one com-

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tioners' trade with the Soviet Union, thus presenting an arbitrable dispute over the scope of the contract's management rights clause.

The ILA's conduct in *Allied International* involves similar coercion against neutral parties with an object of forcing those neutrals to cease doing business with companies such as Petitioners (Br. *amicus curiae* of Occidental Chemical 5-6, *ILA v. Allied International, Inc.*, No. 80-1663). In that case, as here, the critical factor is the method by which the ILA chose to express its political views. In both cases, the ILA's conduct was directed at specific companies because of their trading relationships with a foreign government. Federal labor law should not protect such conduct in either case.

[5] *Accord, Kelly v. United States Postal Service*, 492 F. Supp. 121, 126 (S.D. Ohio 1980) (employee wearing "death to the Shah" slogan on tee-shirt engaged in "purely political" conduct not protected by Section 7 of the LMRA). *See also Soft Drink Workers Local 812, IBT v. NLRB*, 105 L.R.R.M. 2658, 2662 n.11 (D.C. Cir. 1980). The Solicitor General would hold *Eastex* and the other authorities cited in Petitioners' principal brief irrelevant because, in his view, a purely political *Eastex* case still involves a labor dispute (S.G. Br. at 15, n.11). But that is questionable speculation in light of the similarity in the definition of the term "labor dispute" found in both the LMRA and Norris-LaGuardia. *Eastex*, 437 U.S. at 565, n.14. Moreover, that view misses the very point of *Eastex*. That the ILA's boycott would not enjoy Section 7 protection under *Eastex* renders that conduct, by definition, outside the concerns of both the LMRA and Norris-LaGuardia. As a result, the restrictions of the Norris-LaGuardia Act should not interfere with the usual process of law in such a case.

[6] 29 U.S.C. § 157. *Accord*, 29 U.S.C. § 102.

mentator has cogently observed, where the employer "is not a party to the controversy . . . there is no reason why he should be forced to permit his business to be used as a battleground." Getman, *The Protection of Economic Pressure by Section 7 of the National Labor Relations Act*, 115 U. PA. L. REV. 1195, 1221 (1967).

Second, in addition to limiting the scope of protected concerted activity to the objectives of better wages and working conditions, national labor policy recognizes the desirability of promoting collective bargaining ending with agreements not to strike. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 453 (1957). "The assurance of swift and effective judicial relief provides incentive to eschew economic weapons in favor of binding grievance procedures and no-strike clauses." *William E. Arnold Co. v. Carpenters*, 417 U.S. 12, 18 (1974). This Court has never placed a restriction on the subject matter of disputes arising under contracts covered by Section 301 of the LMRA, 29 U.S.C. § 185. *See, e.g., Retail Clerks v. Lion Dry Goods*, 369 U.S. 17 (1962). The Court's recent decision in *United Association of Journeymen Plumbers v. Local 334*, 101 S.Ct. 2546 (1981) leaves no doubt that Section 301 covers *any* dispute arising out of a collective bargaining agreement.

Accordingly, the suggestion that Section 301 jurisdiction can be no broader than the restrictions of Norris-LaGuardia is groundless. Respondents misread *dictum* in *Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397 (1976), to support this assertion (ILA Br. 11-12). The language quoted therein is taken from a discussion of whether Section 301 would permit injunctive relief in a case where there was no question that Norris-LaGuardia applied. That, of course, is the very question in this case, and *Buffalo Forge* does not support the view that Section 301 jurisdiction should be denied in cases not involving a labor dispute.

To the contrary, the issue of specific enforcement of a collective bargaining agreement provides further reason for not extending the protections of the Norris-LaGuardia Act to this case. Norris-LaGuardia certainly was not intended to legitimize union conduct in blatant defiance of a no-strike pledge; conversely, the effective enforcement of contractual commitments was not one of the abuses sought to be remedied by the Act. In enacting Norris-LaGuardia, Congress did not intend to give unions the right to ignore contractual commitments with impunity. *Cf. Complete Auto Transit, Inc. v. Reis*, 101 S.Ct. 1836, 1850-51 (Burger, C.J., dissenting).

The ILA's discussion of the legislative history of the LMRA adds nothing to its position. Congress assiduously avoided using the term "labor dispute" in Section 301 of the LMRA, as well as in Section 502(2) in which it defined a "strike."[7] Indeed, Congress expressly differentiated the term "labor dispute" from the term "strike" by reasserting in Section 502(3) of the LMRA the narrow definition of the term "labor dispute" that was used in the Wagner Act. *See* 29 U.S.C. § 142(3). Congress defined the prohibitions of Section 8(b)(4) without reference to labor disputes. *See* 29 U.S.C. § 158(b)(4). The ability of the President to intervene in strikes under the LMRA's national emergency provision is similarly unrestricted. *See* 29 U.S.C. § 206. Had Congress intended to limit the application of Section 301 to labor disputes, it easily could have done so.[8] Indeed, the ILA's

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[7] That provision states:

> The term 'strike' includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

29 U.S.C. § 142(2)

[8] Respondents' reliance on *American Communications Association v. Douds*, 339 U.S. 382 (1950) is curious. The Court there

argument would result in a dangerous contraction of the scope of Section 301 contrary to national labor policy.[9]

Thus, there is no merit in the contention that the collective bargaining relationship between the parties implies that this case involves a "labor dispute" for purposes of Norris-LaGuardia.[10] Indeed, this argument completely misses the point of the Norris-LaGuardia Act.

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upheld the constitutionality of Section 9(h) of the LMRA, which denied certain benefits otherwise available under the LRMA to unions which had not filed "non-Communist" affidavits. The Court observed that one of the reasons Section 9(h) was enacted was because of evidence that political groups had infiltrated union organizations "not to support and further trade union objectives, . . . but to make them a device by which commerce and industry might be disrupted when the dictates of political policy required such action." 339 U.S. at 389. Respondents' suggestion that Section 9(h) concerned only infiltration of the labor movement by Communists cannot withstand the Court's observation that "political strikes [are] the substantive evil at which Section 9(h) is aimed." 339 U.S. at 396. Section 9(h) thus is further evidence that, from the perspective of national labor policy, union economic power is legitimately exercised only when it is used to obtain better wages and working conditions. *See also, United States v. Brown*, 381 U.S. 437 (1965).

[9] The Solicitor General suggests without elaboration that consistent application of federal labor law requires the "appropriate interpretation" be given to the Norris-LaGuardia Act's definition of labor dispute. (S.G. Br. 2-3). The source of his concern is not readily apparent. Section 203(d) of the LMRA, 29 U.S.C. § 173(d), on which he relies, refers to the function of the Federal Mediation and Conciliation Service. Petitioners see no reason why that agency should become involved in a purely political work stoppage, and discern no serious harm to federal labor policy if it could not do so.

[10] The ILA's suggestion (ILA Br. 10) that there would have been no lawsuit here if the parties' collective bargaining agreement did not contain a no-strike clause does not make this case like *Buffalo Forge*. The same is true of every § 301 action brought to enforce a no-strike clause. But that fact suggests neither that Norris-LaGuardia applies here nor that injunctive relief is unwarranted.

The purpose of that Act is to prohibit federal court injunctions against certain specific forms of union conduct. If the union engages in *other* conduct, the protections of the Act simply do not apply. The applicability of Norris-LaGuardia in particular cases thus depends not on the legal theory advanced by the plaintiff or the existence of a collective bargaining relationship, but, rather, on the motivation of the union's conduct.

A third public policy consideration relevant here is the ILA's interference with the government's conduct of foreign policy. The ILA's recent announcement of a boycott of Polish cargo [11] is only the latest in a long series of such actions undertaken by Respondents without regard to the position of the Department of State. Comment, *Protest Boycotts and Federal Labor Laws: The Russian Trade Boycott Litigation*, 3 NW. J. INTL. L. & BUS. 211, 248 (1981). Petitioners agree (Pet. Br. 23-25) with the Solicitor General (S.G. Br. 1-2) that foreign policy should not be made on the docks. The protections of the Norris-LaGuardia Act should not be extended in this case to permit such a result. Because this case thus does not involve a tension between two competing aspects of national labor policy, *cf. Barrentine v. Arkansas-Best Freight Systems*, 101 S.Ct. 1437 (1981), there is no reason not to permit swift and effective enforcement of Petitioners' collective bargaining agreement in furtherance of the policies of Section 301. *William E. Arnold Co. v. Carpenters*, 417 U.S. 12 (1974).

II. INJUNCTIVE RELIEF IN THIS CASE IS NOT PRECLUDED BY *BUFFALO FORGE*

Respondents disagree with both Petitioners and the Solicitor General in arguing that injunctive relief in this case is unwarranted, assuming the applicability of the Norris-LaGuardia Act. Several points here warrant reply.

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[11] Wall St. J., Dec. 22, 1981 at 14, Col. 3.

The ILA contends that *Buffalo Forge* precludes injunctive relief because the underlying dispute is not arbitrable. Indeed, Respondents contend that this dispute "is even further removed from the arbitration clause" than was the work stoppage in *Buffalo Forge* (Resp. Br. 18). What its argument ignores is that the ILA's objective in this work stoppage makes *Buffalo Forge* readily distinguishable. The strike in this case, unlike that in *Buffalo Forge*, resulted from an affirmative act of the employer, namely, Petitioners' decision to continue trading in Soviet goods thereby requiring ILA employees to handle that cargo. The decision directly affected the employer-employee relationship and thus implicated the parties' collective bargaining agreement. In *Buffalo Forge*, on the other hand, the striking employees honored the picket line solely out of sympathy for the picketers, and not as a result of any action taken by the employer directed at the sympathy strikers.

That this case involves an affirmative act of the employer implicating the parties' collective bargaining agreement shows why the ILA's work stoppage in this case is an arbitrable dispute within the meaning of *Boys Markets*, while the dispute in *Buffalo Forge* was not. Because it results in ILA members refusing to handle Soviet cargo, Respondents' disapproval of Petitioners' decision to trade with the Soviets implicates the management rights provision of the contract.[12] Unlike *Buffalo Forge*, this work stoppage and the dispute underlying it are confined to the employment relation-

[12] The Solicitor General also argues that the case raises an issue under the "burdensome conditions" clause of the contract, in that the ILA objected to work assignments to handle Soviet cargo (S.G. Br. 20-26). The right to assign work is derived from the management rights clause, similar to the right of the employer to choose its customers. As a result, the Solicitor General's position is subsumed in that of Petitioners; the "burdensome conditions" clause merely provides an express remedy for disputes over certain exercises of managerial prerogative.

ship covered by the parties' collective bargaining agreement. As in *Boys Markets*, the work stoppage in this case involved a disagreement over the effect and interpretation of a specific provision in the parties' collective bargaining agreement, other than the contract's no-strike clause. Indeed, the work stoppage here is like any other case in which employees challenge the conditions under which they will perform work. Certainly these kinds of disputes are "grist in the mill of the arbitrators." *United Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574, 584 (1960). *See also, Barrentine v. Arkansas-Best Freight Systems*, 101 S.Ct. at 1450 (Burger, C.J., dissenting).[13]

This distinction thus vitiates Respondents' arguments against the propriety of *Boys Markets* relief in this case. The ILA's argument (Resp. Br. 21) that this case does not involve a dispute over management rights is absurd. The ILA denied its labor to Petitioners, and not as it asserts, to the Soviets. Furthermore, Respondents most emphatically *did* tell their employers they could not do business with Russia, at least so far as longshore work was necessary to that business. That the boycott did not extend to non-Soviet goods makes it no less an attempt to dictate Petitioners' choice of customers. That

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[13] Thus, arbitrators routinely determine the propriety of managerial decisions affecting assignment of work. *See, e.g., Aerojet Ordnance & Manufacturing Co.*, 61 Lab. Arb. (BNA) 581 (Rule, 1973) (company properly assigned particular operation to employees classified as assemblers rather than to inspectors); *Lear Siegler, Inc.*, 63 Lab. Arb. (BNA) 208 (Herman, 1974) (an employer properly assigned testing of parts to employees classified as testers rather than to employees holding higher classified job of electronic analyzer). Where an employee refuses a work assignment, he is subject to discipline:

> It is longstanding industrial relations practice that with respect to management orders, employees must 'Obey now and grieve later', where they feel that management is violating the agreement.

Waterloo Industries, 62 Lab. Arb. (BNA) 605, 609 (Gilroy, 1974).

the ILA did absolutely nothing to further its boycott other than refuse to handle Soviet cargo demonstrates that Petitioners were intended to be, and in fact became, the focus of the boycott, notwithstanding its political genesis.

Other arguments suggesting that *Buffalo Forge* governs this case are equally without merit. Unlike the arbitration provision in *Buffalo Forge*, the arbitration provision in this case is not restricted to disputes over the meaning of specific provisions in the collective bargaining agreement; indeed, it broadly provides for arbitration of all "matters in dispute" (J.A. 62). It would be nonsense to suggest that the ILA's work stoppage was not a matter in dispute between Petitioners and Respondents. It is similarly illogical to say that the dispute is not arbitrable because no arbitrator could resolve the underlying dispute. That argument begs the very arbitrable issue question posed in this case—whether the employer was within its rights as defined by the management rights provision in continuing to deal with the Soviet Union. That question, of course, is to be decided by an arbitrator and not, as did the Fifth Circuit below, by a court.[14]

Respondents contend that this work stoppage is not arbitrable because the arbitrator could only decide whether or not the strike violated the contract (Resp. Br. 24). This argument is premised on the erroneous belief, shared by *amicus curiae* American Federation of Labor and Congress of Industrial Organization ("AFL-CIO"), that a *Boys Market* injunction cannot issue unless the strike is "in response to an alleged employer contract violation" (AFL-CIO Br. 8). Such a claim has no bearing in this case for the reasons set forth above. That argument,

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[14] The parties' no-strike clause is broadly worded, and thus is not tied to the arbitration provision. Accordingly, there is no reason here to apply the principle of coterminous application of the two provisions. *See Pacemaker Yacht Co., Div. v. NLRB*, 108 L.R.R.M. 2817 (3d Cir. 1981).

moreover, is directly foreclosed by the Court's decision in *Gateway Coal v. United Mine Workers*, 414 U.S. 368 (1974). The work stoppage at issue there was prompted by the company's reinstatement of two supervisory employees who had previously been suspended following improper behavior in connection with a safety dispute. This Court had no difficulty finding the work stoppage to be within the scope of the parties' contractual arbitration provision which, like the one in this case, was broadly worded:

> This arbitration provision appears sufficiently broad to encompass the instant dispute. The contractual obligation reaches "any local trouble of any kind aris[ing] at the mine," and the continued presence in Gateway Mine of two particular foremen is plainly a local issue. On its face, this contractual language admits of only one interpretation: that the agreement required the union to submit this dispute to arbitration for resolution by an impartial umpire.

414 U.S. at 376. *Gateway Coal* arose not from a dispute over a "presently existing threat to the employees' safety, but rather a generalized doubt in the competence and integrity of company supervisors." 414 U.S. at 386. Similarly, *Gateway Coal* did not arise from a specifically alleged employer contractual violation. It was never argued in that case that the company violated the contract by reinstating the supervisors; the claim was seen rather as a safety dispute. Like this case, *Gateway Coal* involved a disagreement and resulting work stoppage over the exercise of managerial prerogative; *i.e.*, over the company's decision there to reinstate the two supervisors. Yet no one argued in *Gateway Coal* that *Boys Markets* relief was unwarranted because the underlying dispute was not grounded in a particular alleged contract violation. Nor can *Buffalo Forge* be fairly read as requiring one.

The error of Respondents' position is best seen in their assertion (Resp. Br. 18) that this case, just like

Buffalo Forge, involves a sympathy strike. Nothing could be further from the truth. A union engaging in a sympathy strike has an economic motivation directed at legitimate union objectives. Indeed, honoring a picket line is one of the specific activities sought to be protected by Norris-LaGuardia. Sympathy strikes are thus anything but "altruistic;" the strike in *Buffalo Forge* was designed to place additional economic pressure on the employer in support of the demands of its other employees. Here, on the other hand, the ILA's conduct may well have been altruistic, albeit inconsistent with foreign policy. That the ILA's boycott was not motivated by legitimate trade union concerns is the decisive fact in this case, as it reveals that the ILA did not seek any objective protected by federal labor law. Because there is no statutory tension here between two conflicting aspects of national labor policy, *see Barrentine v. Arkansas-Best Motor Freight Systems*, 101 S.Ct. 1437 (1981), effective enforcement of the no-strike clause in furtherance of the policy behind Section 301 is required.

It is hornbook law that there is a "strong congressional policy favoring grievance procedures and arbitration as a method of resolving labor disputes . . . . This mechanism promotes industrial harmony and avoids strikes and conflicts; it provides a swift, fair, and inexpensive remedy." *Barrentine v. Arkansas-Best Freight Systems*, 101 S. Ct. at 1448 (Burger, C.J., dissenting). *Accord, Clayton v. UAW*, 101 S.Ct. 2088 (1981). By refusing to give due deference to the presumption of arbitrability and by improperly deciding the merits of the underlying arbitrable dispute, the Fifth Circuit's decision below improperly ignores this policy.

III. *BUFFALO FORGE* SHOULD BE CLARIFIED TO PRECLUDE ITS APPLICATION TO CASES INVOLVING UNION OBJECTIVES THAT ARE BEYOND THE CONTROL OF THE EMPLOYER

As set forth in our principal brief and herein, the Court need not overrule *Buffalo Forge*. The lower court's decision in this case, however, argues strongly for reconsideration and clarification of the Court's intention in that case.

Neither Respondent nor the AFL-CIO seriously dispute Petitioners' observation that, in the absence of a pre-arbitration injunction, an employer is left without an effective remedy against a work stoppage of this nature. Respondents say merely that the lack of an effective remedy is irrelevant (Resp. Br. 32, n.30), and thereby reveal a callous disregard for effectuation of the national labor policy goal of peaceful resolution of labor disputes. Regarding the uncertain availability of a damages remedy in a work stoppage like this (*see* Pet. Br. 32-33), the AFL-CIO merely observes that some cases have resulted in large damage awards against local unions. That fact hardly proves that the pursuit of damages is as effective a remedy as an injunction. More important, the AFL-CIO completely ignores the critical point that acrimonious litigation over damages further exacerbates industrial strife and undermines the goals of national labor policy. With respect to the possibility of disciplining employees engaged in illegal work stoppages, the AFL-CIO seemingly concedes the propriety of such action, neglecting both the recent law questioning the availability of that remedy (Pet. Br. 39-40 n.19), and the fact that wholesale discipline does nothing to ease industrial strife. Indeed, such action by an employer may amount to economic suicide. *Cf. Complete Auto Transit, Inc. v. Reis*, 101 S.Ct. at 1851 (Burger, C.J., dissenting). In a situation like this, where employees are obtained through a union's hiring hall, moreover, that action would be altogether ineffective.

The "lawless vacuum" resulting from the lack of effective remedies against work stoppages in breach of contract is particularly harsh in cases such as this, where, if Respondents' argument is accepted, the employer can do absolutely nothing to resolve the dispute causing the work stoppage.[15] Certainly where the employer has bargained for a broad no-strike provision, it plainly should not bear the responsibility when the union's goals bear no relationship to the protections provided by the federal labor laws. *Complete Auto Transit, Inc. v. Reis*, 101 S.Ct. at 1851 (Burger, C.J., dissenting).[16]

The unintended and unfortunate results of *Buffalo Forge* thus become evident in this case. The Court's reliance on the theory of coterminous application of contractual no-strike and arbitration provisions has caused considerable difficulty in the lower courts (Pet. Br. 34-35).[17] A mechanical application of that theory has yielded results inconsistent with federal labor policy. As the Third Circuit recently observed:

> Moreover, to require specific enumeration in a no-strike clause of all possible nonarbitrable disputes that might result in a work stoppage would place an unjustified obstacle on the ability of employers to

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[15] Under Petitioners' approach to this case, on the other hand, the employer does have the power to resolve the cause of the work stoppage because it is directed at its decision to continue trading with the Soviet Union, *see* pp. 10-15 *supra*, thereby making this strike enjoinable under *Boys Markets*.

[16] One commentator has argued that the impact of the Court's decision in *Complete Auto Transit* is contrary to the goal of peaceful resolution of labor disputes because of the absence of remedies available to an employer faced with an illegal work stoppage, and that the Court's decision there "increases the odds on serious reconsideration of *Buffalo Forge*." Gould, *Address before the American Bar Association Section on Labor Law 1981 Convention, reported in* [1981] Daily Lab. Rep. (BNA) D-1, D-5 (Aug. 11, 1981.)

[17] *See also* Gould, *Recent Developments Under the National Labor Relations Act: The Board and the Circuit Courts*, 32 LAB. L. J. 424, 444 (1981).

> bargain for an across-the-board no-strike clause and on the employees' ability to gain concessions in return for such a pledge. An employer who bargains for such a clause would never be certain that employees would not strike over some unforeseeable dispute, and employees, in turn, would have less to offer during contract negotiations. No federal labor policy supports such a restriction on party autonomy in the collective bargaining process.

Pacemaker Yacht Co., Div. v. NLRB, 108 L.R.R.M. 2817, 2830 (3d Cir. 1981).

Of equal concern is the view articulated by the *Buffalo Forge* Court concerning the use of the labor injunction in fostering the national labor policy of resolving disputes through arbitration rather than through strikes and boycotts. There is no principled reason, consistent with the ban of Norris-LaGuardia, for permitting an injunction to enforce an arbitrator's award while denying the same relief while the parties pursue the arbitration process. In both situations, federal courts are forced to enjoin work stoppages. To say that the pre-arbitration injunction usurps the arbitrator's function is unrealistic. *Buffalo Forge*, 428 U.S. at 428 (Stevens, J., dissenting). Federal courts routinely interpret the collective bargaining agreement in every *Boys Markets* case, as well as in other areas of federal labor law. *See, e.g., Local 189, Meat Cutters v. Jewel Tea Co., Inc.*, 381 U.S. 676, 686 (1965) ("Federal courts are not without experience in interpreting collective bargaining agreements and classifying bargaining subjects as terms or conditions of employment") (White, J.). The courts' initial interpretation in such cases is fully consistent with the teachings of the *Steelworkers Trilogy*[18] and does not usurp the arbitrator's function. In every *Boys Markets* case the courts make two initial determinations: whether the work stoppage does, in fact, violate an express or implied no-strike

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[18] *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

clause,[19] and whether there is a colorable claim that the dispute is over an arbitrable grievance. Indeed, it was the Fifth Circuit below which improperly usurped the arbitrator by deciding the arbitrable dispute on the merits.

It is further submitted that the requirement of an underlying arbitrable dispute before a pre-arbitration injunction can issue is inconsistent with national labor policy, when applied in a case such as this. The ILA's work stoppage is a naked breach of contract which, according to the Fifth Circuit, cannot be enjoined. A work stoppage motivated by a claim that the employer had violated the contract would be far more defensible, but, ironically, that work stoppage would be enjoinable. Such a result encourages lawlessness and strife (Pet. Br. 32-33), and does nothing to induce employers to agree to broad no-strike provisions. *Complete Auto Transit, Inc. v. Reis*, 101 S.Ct. at 1851 (Burger, C.J., dissenting). Permitting such a strike without effective redress plainly deprives the employer of its expectation of continued uninterrupted production during the life of the contract.[20]

As set forth in our principal brief and herein, the Court need not reach the question of the applicability of *Buffalo Forge*. If it does so, Petitioners submit that *Buffalo Forge* should be clarified so as to permit pre-

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[19] This is particularly common in cases where no-strike clauses reserve the right to strike in certain situations. *See, e.g., Associated General Contractors of Illinois v. Illinois Conference of Teamsters*, 454 F.2d 1324 (7th Cir. 1972) (Stevens, J.); *Matson Plastering Co. v. Plasterers Local 295*, 633 F.2d 1306 (9th Cir. 1980). This is a common occurrence; roughly half of all no-strike provisions contain some restriction on the no-strike pledge. Feller, *A General Theory of the Collective Bargaining Agreement*, 61 CALIF. L. REV. 663, 758 (1973).

[20] The AFL-CIO's concern (AFL-CIO Br. 10-17) with *stare decisis* is the best evidence that it has also been confused by *Buffalo Forge*. Subsequent interpretation of that decision has made it clear that it disserves the interests of national labor policy and, accordingly, that it should be reconsidered.

arbitration injunctive relief in a case like this, where there is clear evidence that the work stoppage violates the collective bargaining agreement, and where all the other conditions set forth in *Boys Markets* are satisfied. This clarification would extend only to situations in which the objective of the union's work stoppage is beyond the control of the employer. *Cf., NLRB v. Pipefitters Local 638*, 429 U.S. 507 (1977). Such a result would not only encourage arbitration and the peaceful resolution of labor disputes, but would also remove the anomaly of an employer being unable to obtain effective relief against a work stoppage which it had nothing whatsoever to do with and which it is powerless to resolve. Such a result, as argued in our principal brief, would further national labor policy by removing much of the confusion caused by *Buffalo Forge* in the lower courts, particularly if the Court emphasizes that the theory of coterminous application of no-strike and arbitration provisions is not part of the rationale in *Buffalo Forge*. By acknowledging that a clear breach of the no-strike provision creates an arbitrable dispute within the meaning of *Boys Markets*, the Court will further the interests of peaceful resolution of labor disputes.

CONCLUSION

Petitioners respectfully pray that this Court reverse the decision of the court of appeals.

Respectfully Submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION and
OCCIDENTAL PETROLEUM CORPORATION,
Petitioners,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION and
OCCIDENTAL PETROLEUM CORPORATION,
Petitioners,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations, a federation of 102 national and international unions with a total membership of 14,500,000 working men and women, files this brief *amicus curiae* in support of the position of the respondents, with the consent of the parties as provided for in the Rules of this Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

The discussion that follows is directed to petitioners' request that the Court "reconsider its decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976)." Pet. Br. i, 31-43.

The felt necessity to resort to a request for the overruling of *Buffalo Forge* is, of course, a tacit admission against interest by petitioners as to the soundness of their primary argument that the decision below is wrong under the law as it stands. And in the normal course, we would not dignify such a desperate gambit with a response. But the central issue here—as it was in *Buffalo Forge* and in *Boys Markets* v. *Clerks Union*, 398 U.S. 235—concerns the scope of the Norris-LaGuardia Act and of the fereral courts' authority to enjoin strikes. The use and abuse of the labor injunction has been a dominant force in the evolution of the national labor policy during this century. Norris-LaGuardia's enactment evidenced "a clear disapproval of [the] free wheeling judicial exercises" that produced those injunctions. *Railroad Trainmen* v. *Terminal Co.*, 394 U.S. 369, 382-383. Thus, without regard to their substance, attempts, such as petitioner's here, to narrow Norris-LaGuardia and to multiply the occasions for judicial evaluation of the legality of strikes in progress, by the very nature of the subject matter, are a matter of consequence. In what may well be an excess of caution, in the argument that follows, we therefore return to first principles to show that *Buffalo Forge* was correctly decided and that this is an area in which adherence to thoroughly considered precedent is particularly warranted.

ARGUMENT

A. *Buffalo Forge* settled beyond question three propositions regarding the interplay between § 4 of Norris-LaGuardia (which bans injunctions prohibiting employees "in concert from * * * [l]eaving or refusing to perform any work"), and §§ 203(d) & 301 of the Labor Management Relations Act of 1947 (which state the policy in favor of "[f]inal adjustment of * * * grievance disputes * * * arising over * * * the application or interpretation of a collective bargaining agreement * * * by a method agreed on by the parties" and make collec-

tive agreements, including provisions requiring the parties to employ such methods, enforceable in court).

The first proposition draws a narrow and precise lesson from what Congress said and did in adopting the LMRA:

> In the course of enacting the Taft-Hartley Act, Congress rejected the proposal that the Norris-LaGuardia Act's prohibition against labor-dispute injunctions be lifted to the extent necessary to make injunctive remedies available in federal courts for the purpose of enforcing collective-bargaining agreements. See *Sinclair Refining Co.* v. *Atkinson*, *supra*, at 205-208, and 216-224 (dissenting opinion). The allegation of the complaint that the Union was breaching its obligation not to strike did not in itself warrant an injunction. As was stated in the *Sinclair* dissent embraced in *Boys Markets*:
>
> > "[T]here is no general federal anti-strike policy; and although a suit may be brought under § 301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail." *Sinclair Refining Co.* v. *Atkinson*, *supra*, at 225. [428 U.S. at 409.]

The *Buffalo Forge* dissent agreed:

> One week after the decision in *Sinclair*, the Court decided *Teamsters* v. *Yellow Transit*, 370 U.S. 711, by *per curiam* order citing only *Sinclair*. The dissenters in *Sinclair*, whose position was substantially adopted in *Boys Markets*, concurred in *Yellow Transit* because "the collective bargaining agreement involved in this case does not bind either party to arbitrate any dispute." 370 U.S., at 711-712. In this case, as in those cases, it does not follow from the availability of an injunction when the agreement contains a mandatory arbitration clause that one may issue when it does not. See n. 20, *infra*. [428 U.S. at 415, n. 4.]

And in n. 20, Mr. Justice Stevens added:

> It is not necessary to hold that an injunction may issue if the scope of the no-strike clause is not a clearly arbitrable issue. If the agreement contains no arbitration clause whatsoever, enforcement of the no-strike clause would not promote arbitration by encouraging employers to agree to an arbitration clause in exchange for a no-strike clause. Furthermore, even if the agreement contains an arbitration clause, but the clause does not clearly extend to the question whether a strike violates the agreement, then the parties' commitment to enforcement of the no-strike clause through enforcement of the arbitrator's final decision also remains unclear. [428 U.S. at 426-427, n. 20.]

Thus, from *Yellow Transit* through *Buffalo Forge* the Court has been unanimous in acknowledging that the national labor policy disapproves injunctions for alleged breaches of no-strike commitments where "the scope of the no-strike clause is not a clearly arbitrable issue."

Second, the *Buffalo Forge* Court was unanimous in recognizing that in situations such as that presented in *Boys Markets* injunctive relief against a breach-of-contract strike *is* available. The majority there stated:

> In *Boys Markets*, the union demanded that supervisory employees cease performing tasks claimed by the union to be union work. The union struck when the demand was rejected. The dispute was of the kind subject to the grievance and arbitration clauses contained in the collective-bargaining contract. * * * The driving force behind *Boys Markets* was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties. Only to that extent was it held necessary to accommodate § 4 of the Norris-LaGuardia Act to § 301 of the Labor Management Relations Act and to lift the former's ban against the issuance of injunctions in labor disputes. Striking over

> an arbitrable dispute would interfere with and frustrate the arbitral processes by which the parties had chosen to settle a dispute. The *quid pro quo* for the employer's promise to arbitrate was the union's obligation not to strike over issues that were subject to the arbitration machinery. Even in the absence of an express no-strike clause, an undertaking not to strike would be implied where the strike was over an otherwise arbitrable dispute. *Gateway Coal Co.* v. *Mine Workers, supra; Teamsters Local* v. *Lucas Flour Co.*, 369 U.S. 95 (1962). Otherwise, the employer would be deprived of his bargain and the policy of the labor statutes to implement private resolution of disputes in a manner agreed upon would seriously suffer [428 U.S. at 406-407. See also *id.* at 415-424, 431 (Stevens, J., dissenting).]

Third, the *Buffalo Forge* Court was also unanimous concerning the proposition that an arbitrator's award declaring a strike to be in breach of contract may be specifically enforced:

> Whether the sympathy strike the Union called violated the no-strike clause, and the appropriate remedies if it did, are subject to the agreed-upon dispute-settlement procedures of the contracts and are ultimately issues for the arbitrator. *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574 (1960); *Steelworkers* v. *Enterprise Corp.*, 363 U.S. 593 (1960). The employer thus was entitled to invoke the arbitral process to determine the legality of the sympathy strike and to obtain a court order requiring the Union to arbitrate if the Union refused to do so. *Gateway Coal Co.* v. *Mine Workers*, 414 U.S. 368 (1974). Furthermore, were the issue arbitrated and the strike found illegal, the relevant federal statutes as construed in our cases would perimt an injunction to enforce the arbitral decision. *Steelworkers* v. *Enterprise Corp., supra.* [428 U.S. at 405. See also *id.* at 424-426, 431 (Stevens, J., dissenting).]

Thus, the only area of disagreement in *Buffalo Forge* concerned the situation in which the sole arbitrable dis-

pute is whether a work stoppage is in breach of contract; *viz.*, where, in contrast to *Boys Markets* the union is not challenging through a strike an employer action or order on a subject governed by the collective agreement and subject to settlement through arbitration. The *Buffalo Forge* majority held that no such injunctions may issue (see 428 U.S. at 410-413), while the dissent in that case concluded that injunctions may issue subject to the following conditions:

> [N]o injunction or temporary restraining order should issue without first giving the union an adequate opportunity to present evidence and argument, particularly upon the proper interpretation of the collective-bargaining agreement; the judge should not issue an injunction without convincing evidence that the strike is clearly within the no-strike clause. Furthermore, to protect the efficacy of arbitration, any such injunction should require the parties to submit the issue immediately to the contractual grievance procedure, and if the union so requests, at the last stage and upon an expedited schedule that assures a decision by the arbitrator as soon as practicable. [428 U.S. at 431; footnote omitted.]

With all deference to the reasoning of the dissent, the legislative materials cannot be bent to that shape without breaking.

The *Boys Markets* rule, we believe, is best understood as the synthesis of earlier rulings in *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448 and in *Teamsters Local* v. *Lucas Flour Co.*, 369 U.S. 95. In *Lincoln Mills* the Court concluded:

> The question remains whether jurisdiction to compel arbitration of grievance disputes is withdrawn by the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. Section 101. * * * Though a literal reading might bring the dispute within the terms of the Act (see Cox, Grievance Arbitration in the Federal Courts, 67 Harv. L. Rev. 591, 602-604), we see no justifica-

> tion in policy for restricting Section 301(a) to damage suits, leaving specific performance of a contract to arbitrate grievance disputes to the inapposite procedural requirements of that Act. * * * The Congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of Section 7 of the Norris-LaGuardia Act. [353 U.S. at 457-459.]

In *Lucas Flour* the Court posed the question presented as follows:

> Whether, as a matter of federal law, the strike which the union called was a violation of the collective bargaining contract is thus the ultimate issue which this case preesnts. It is argued that there could be no violation in the absence of a no-strike clause in the contract explicitly covering the subject of the dispute over whihc the strike was called. We disagree. [369 U.S. at 104-105.]

The Court then observed that:

> In a consistent course of decisions the Courts of Appeals of at least five Federal Circuits have held that a strike to settle a dispute which a collective bargaining agreement provides shall be settled exclusively and finally by compulsory arbitration constitutes a violation of the agreement. The National Labor Relations Board has reached the same conclusion. *W. L. Mead, Inc.*, 113 NLRB 1040. We approve that doctrine [369 U.S. at 105.]

And the Court concluded:

> The grievance over which the union struck was, as it concedes, one which it had expressly agreed to settle by submission to final and binding arbitration proceedings. The strike which it called was a violation of that contractual obligation. [369 U.S. at 106.]

Thus, in essence, prior to *Boys Markets* the Court had concluded that: 1) provisions to arbitrate are, despite

Norris-LaGuardia, specifically enforceable; and 2) as a matter of law the union's promise to take to arbitration its grievances over alleged employer contract violations is not simply an agreement to submit such disputes to a particular tribunal, but an undertaking also to "substitute [arbitration] for industrial strife." *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, 578. While the phrasing is in terms of one promise (that the union's allegations that the employer has violated the collective agreement will be settled by arbitration), the law regards the union as having made two promises—that the dispute over the employer's contractual right to act as he did will be settled by arbitration and will *not* be settled by resort to economic force. And *Boys Markets* reads the lessons of *Lincoln Mills* and *Lucas Flour* in combination by holding that notwithstanding Norris-LaGuardia the promise to arbitrate as thus defined is enforceable in its entirety.

That reasoning does not apply where there is no underlying dispute between the parties and the only issue is whether the union has breached the obligation stated in a no-strike clause—*viz.* where the strike is not in response to an alleged employer contract violation but is traceable to a cause other than such an alleged violation.[1] As the *Buffalo Forge* Court recognized, the national labor policy has never regarded the substantive promises the parties exchange to carry with them the implication that whenever a breach is alleged that allegation requires a cessation of the disputed conduct pending settlement:

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[1] While the substance of the collective agreement here and the objective of the ILA's refusal to handle "Soviet cargo" are variously characterized (compare the positions of the petitioners, of the United States (which is not a party of the collective agreement) and of the respondents), the one point that is clear is that unlike *Boys Markets*, and like *Buffalo Forge*, the union is not attempting to substitute the use of economic force for use of the arbitration system to resolve some underlying contract grievance.

> If an injunction could issue against the strike in this case, so in proper circumstances could a court enjoin any other alleged breach of contract epnding the exhaustion of the applicable grievance and arbitration provisions even though the injunction would otherwise violate one of the express prohibitions of § 4. The court in such cases would be permitted, if the dispute was arbitrable, to hold hearings, make findings of fact, interpret the applicable provisions of the contract and issue injunctions so as to restore the status quo or to otherwise regulate the relationship of the parties pending exhaustion of the arbitration process. This would cut deeply into the policy of the Norris-LaGuardia Act and make the courts potential participants in a wide range of arbitrable disputes under the many existing and future collective-bargaining contracts, not just for the purpose of enforcing promises to arbitrate, which was the limit of *Boys Markets*, but for the purpose of preliminary dealing with the merits of the factual and legal issues that are subjects for the arbitrator and of issuing injunctions that would otherwise be forbidden by the Norris-LaGuardia Act.
>
> This is not what the parties have bargained for. * * * The parties have agreed to submit to grievance procedures and arbitrate, not to litigate. They have not contracted for a judicial preview of the facts and the law [428 U.S. at 410-411.]

Indeed, as *Lucas Flour* makes plain, the courts do not have the authority to imply a no-strike commitment beyond an undertaking not to strike over an arbitrable grievance. See 369 U.S. at 106 ("What has been said is not to suggest that a no-strike agreement is to be implied beyond the area which it has been agreed will be exclusively covered by compulsory terminal arbitration"). See also *id.* at 105, n. 14. That limitation recognizes that the union's promise to arbitrate its allegations of employer contract violations cannot be read to carry

with it a promise not to strike for other causes. Such a promise has to be separately won by the employer from the union in collective bargaining just as each of the limitations on employer action has to be won separately by the union from the employer. See, e.g. *Labor Board* v. *American Ins. Co.*, 343 U.S. 395, 404-409. And just as such substantive bargaining achievements on the union side do not carry with them a right to pre-arbitration judicial intervention so it is, and should be, on the employer side.

B. Where, as here, a party calls upon this Court to reconsider a rule of law already squarely decided, particularly one involving statutory interpretation rather than constitutional adjudication, it is, of course, not sufficient simply to demonstrate that the prior case was wrongly decided. *Edelman* v. *Jordan*, 415 U.S. 651, 671 n. 14. Rather, principles of *stare decisis* demand at a *minimum* that precedent not be disturbed unless the error in the earlier cases was "fundamental", *Donovan* v. *Dewey*, —— U.S. ——, 49 L.W. 4748, 4751 (Stevens, J., concurring), so that the earlier decision can be characterized as "unreasonable or egregiously incorrect". *Florida Department of Health, etc.* v. *Florida Nursing Home Ass'n.* —— U.S. ——, 49 L.W. 3641, 3642 (Stevens, J., concurring).[2] Further, there ought certainly to be some

[2] While *Florida Department of Health, etc.* involved interpretation of the Eleventh Amendment, *Edelman* shows that *stare decisis* principles enunciated in the context of constitutional adjudication apply with even greater force where, as here, the issue is one of statutory construction. The reason for the distinction is that where statutory interpretation is involved, an erroneous construction can be corrected by Congress, while proper development and application of constitutional principles is entrusted solely to this Court. *Edelman, supra.* In this instance, dissatisfaction by employers with *Buffalo Forge* was in fact brought to Congress' attention. At hearings in 1975 on the proposed Labor Law Reform Bill, H.R. 8410, 95th Cong. 1st Sess. (1977), before the House of Representatives Subcommittee on Labor Management Relations Of The Committee

new factor in the equation, other than a mere change in court personnel (see *Florida Department of Health, etc.*, 49 L.W. at 3642), which gives a reason to believe that the second view is not just as fallible as the first. For example, as in *Monell* v. *Dept. of Social Services*, 436 U.S. 658, more complete historical research may satisfy the Court that the position previously rejected is indubitably correct. Alternatively, as in *Boys Markets* itself, later decided cases may erode the premises of the precedent, or lead to legal anomalies not considered at the time of the previous decision. See 398 U.S. at 235, 241, 244-245 discussed at pp. 12-14, *infra*. Where, however, all the relevant considerations were fully canvassed in the earlier opinion, by both the majority and any dissenting opinions, there is scant basis for sacrificing the long-run goal of a stable and predictable legal system.

For these reasons, it would appear that recent hard-fought cases (including those decided by a divided vote) are the *least* appropriate candidates for reconsideration. In such cases, it is rational expect that no cogent argument escaped the attention of the Court. Further, unless adherence to *stare decisis* is practiced with regard to such cases, the very strength of the conviction on both sides of the question will inevitably lead to further in-

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On Education and Labor, Congress was urged to include an amendment that would have authorized district courts to enjoin strikes in violation of a no-strike clause irrespective of the nature of the dispute underlying the strike. *Proposed Amendments to the National Labor Relations Act: Hearings on H.R. 696 Before the Subcommittee On Labor Management Relations Of The House Committee On Education And Labor*, 95th Cong., 1st Sess. at 179 (1979). This proposal was obviously designed to overrule *Buffalo Forge*. However, while the Labor Law Reform Bill as passed by the House of Representatives in October 1977 did contain an amendment which would have revised *Buffalo Forge*, the bill never passed the Senate to become law. Whether or not this sequence indicates Congressional acquiescence in *Buffalo Forge*, it surely illustrates that Congress has had the *opportunity* to correct any egregious errors it perceived.

stability as the area of the law develops. In this instance, for example, the law regarding injunctions against violations of no-strike clauses has already taken one sharp turn when *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, was overruled in *Boys Markets*. However justified that reversal may have been on the basis of factors such as those discussed above, it undoubtedly encouraged the unusual request in this case that the Court reconsider a decision barely five years old. To accede to that request would create a regime of legal uncertainty particularly inappropriate where, as in labor relations, private contracts are entered into against a background of expectations concerning their legal effect. *Florida Department of Health, etc.*, 49 L.W. at 3642 (Stevens, J., concurring).

If the arguments in favor of *Buffalo Forge* continue to be deemed compelling, there is obviously no reason to reconsider that decision. But under the principles just related there is quite a separate reason *Buffalo Forge* should not be reconsidered: petitioner has entirely failed to shoulder the additional burdens imposed on one requesting that this Court consider anew a statutory question already carefully considered.

First, the developments since *Buffalo Forge* on which petitioner relies differ *toto coelo* from those on which a majority of the Court in *Boys Markets* relied in reconstructing *Sinclair*. The development which was regarded to be decisive in *Boys Markets* was the decision in *Avco Corp.* v. *Aero Lodge*, 390 U.S. 557 that § 301 suits are removable to federal court, with the consequence under *Sinclair* that injunctive relief would not be available at all, contrary to the "congressional purpose embodied in § 301(a) to *supplement*, and not to encroach upon, the pre-existing jurisdiction of the state courts." 398 U.S. at 245, emphasis in original.

Thus, the legal development that led to the overruling of *Sinclair* was a decision of this Court—*Avco*[3]—which, combined with *Sinclair* created a result which was "wholly inconsistent with * * * the Congressional purpose embodied in Section 301(a) * * *." *Id.* See also Justice Stewart's concurring opinion, 398 U.S. at 255, which explains why he changed his views after having joined the majority in *Sinclair*, pointing to *Avco*, and to his own concurring opinion therein.

The post-*Buffalo Forge* decisions on which petitioners rely have not "produced an anomalous situation" let alone one which is inconsistent with the Congressional purpose. On the contrary, those decisions, *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212, and *Complete Auto Transit Co.* v. *Reis*, —— U.S. ——, 49 L.W. 4473, rest squarely on Congressional intent, as the Court's discussion of the legislative history in those cases (and in *Carbon Fuel* of the language of § 301(b) & (e) as well) unmistakably demonstrates. Those decisions produced no new development relevant here for the additional reason that they involved employer remedies for *wildcat* strikes, where the ILA's action herein was admittedly authorized by the ILA's president.

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[3] It should be noted that *Avco* itself did not provide a point for a principled limitation on the effects of *Sinclair*. The issue in *Avco* was whether a suit for breach of a collective bargaining agreement (which contained a no-strike clause and a promise to settle grievances by binding arbitration (see 390 U.S. at 558)) was removable to federal court under 28 U.S.C. § 1441. An affirmative answer was required, notwithstanding the unavailability of an injunction under *Sinclair*. Under an inescapable syllogism: 1) The agreement being subject to federal jurisdiction, and governed by federal law (under *Lincoln Mills* and its progeny), was removable under §§ 1441(a) & (b) (see 390 U.S. at 599-560); and 2): "The nature of the relief available after jurisdiction attaches is, of course, different from the question whether there is jurisdiction to adjudicate the controversy." (see *id.* at 561) Thus the suit was clearly removable, and was subject to *Sinclair*, which had held that no injunction could be granted.

In short, petitioners rewrite history when they assert that "the Court has recently severely cut back on an employer's ability to obtain damages in the case of a strike in breach of a no-strike clause." Pet. Br. 39, n. 19. Those decisions did not at all "cut back" on the availability of damage awards. Rather, they left the rights of employers, unions and employees precisely where Congress deliberately placed them in 1947.[4]

The present state of the law belies also petitioners' cries of "helplessness" (Pet. Br. at 32) and "union * * * impunity" (*id.* at 33). The employers in the companion cases to this one were in no way "helpless;" they proceeded to invoke the arbitration clauses in their collective agreements and obtained within a few days an arbitrator's award ordering the end of the work stoppage that was enforced in district court. Petitioners, however, while alleging that they were "prepared to submit to arbitration" (J. App. 10), apparently never invoked their contract's grievance procedures. They nowhere explain their failure to invoke in their own behalf available and effective contractual remedies while complaining that the law is so impotent that a considered precedent should be overruled.

Moreover, we consider to be ludicrous the suggestion that employers will no longer bargain for broad no-strike clauses unless *Buffalo Forge* is overruled. See Pet. Br.

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[4] Petitioners cite as supposed evidence of disarray in the lower courts as to the meaning of *Buffalo Forge* the fact that at different stages of the controversy in *Complete Auto Transit* the District Court first denied and then granted an injunction, and that the Court of Appeals agreed. (Pet. Br. 39) We submit that those decisions reflect not "a frustrating search for the correct meaning of *Buffalo Forge*" (*id.*), but a scrupulous and entirely successful "search". It is not a sound criticism of the *Buffalo Forge* rule that differences in result "depend[] upon differences of degree. The whole law does so as soon as it is civilized." *Leroy Fibre Company* v. *Chi., Mil. & St.P. Ry.*, 232 U.S. 340, 354 (Holmes, J., concurring.)

40. Petitioners point to no evidence that this has happened in the five years since *Buffalo Forge*, and our own experience with collective bargaining is that now as before employers strive to extract from unions no-strike promises which are as broad as the employer's bargaining power can achieve. There is every reason for employers to maintain this bargaining position under the present law. It has been settled since *Labor Board* v. *Sands Mfg. Co.*, 306 U.S. 332 that an employer may lawfully discharge employees who strike in violation of a contractual no-strike obligation. And while petitioners deprecate the value of the right of discharge, employers valued that right sufficiently in 1947 that at their request Congress codified it in § 13 of the Act as a limitation of the right to strike. See H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 39, quoted in *Complete Auto Transit*, 49 L.W. at 4477. Furthermore, employers can recover damages for breach of a no-strike obligation from unions that are responsible therefor under the common law of agency, as Congress expressly provided in § 301 (b) & (e). See *Carbon Fuel Co.*, 444 U.S. at 216-217. Such damage awards may be enormous.[5] Thus, the image of "utter helplessness" which petitioners would

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[5] Where the only injury to the employer is loss of production, it is simply not true that damages are an inherently inadequate remedy, as the several very large judgments against unions for breach of no-strike agreements attest. *Iowa Beef Processors, Inc.* v. *Meat Cutters*, 597 F.2d 1138 (8th Cir.), *cert. denied*, 444 U.S. 840 (1979) ($1,756,592 damage award against international union and three of its locals upheld); *Motor Carriers Council, Inc.* v. *Teamsters, Local 600*, 516 F.2d 316 (8th Cir. 1975) (per curiam) (award of "damages in excess of $5 million" against union upheld); *Pilot Freight Carriers, Inc.* v. *Teamsters*, 495 F. Supp. 619 (M.D.N.C. 1980), *appeal pending* (4th Cir. No. 80-1547) ($3,030,625 damage award against union); *California Trucking Assn.* v. *Teamsters, Local 70*, 94 LRRM 2981 (N.D. Cal. 1977), *appeal pending* (9th Cir. No. 77-3445) ($3,080,048 damage award against union); *Roadway Express* v. *Highway Truck Drivers*, 299 F. Supp. 1058 (E.D. Pa. 1969) ($980,000 damage award against union).

project is utterly distorted and a broad no-strike clause is a valuable bargain—a strong deterrent against work stoppages during the life of a collective agreement—whether or not the additional remedy of an injunction is available to the employer.

Finally, petitioners' brief is conspicuously deficient in showing that the reasoning of *Buffalo Forge* is faulty, concentrating instead almost exclusively on conflicts stated to have developed among the lower courts in situations far removed from this one. Pet. Br. at 34-35, 37-38. It is questionable whether conflict among the lower courts *ever* justifies reconsideration of a recently decided case; the expected and highly effective response is for this Court in the exercise of its *certiorari* jurisdiction to resolve any square conflicts while further elucidating for the guidance of the lower courts the principles which are to govern decision. But reconsideration of a settled rule of law is particularly inappropriate here where the nature of the asserted conflicts is such that they are no more likely to be solved by reversing a precedent than they were resolved by the original decision. Conflicts in damages cases involving interpretation of no-strike clauses on their merits (Pet. Br. 34-35) as well as conflicts in situations where the arbitrability of a particular dispute is in question (Pet. Br. 37-38) would inevitably arise even if *Buffalo Forge* were overruled; no-strike clauses would still have to be construed by the courts if the parties failed to agree to interpretation by an arbitrator, and arbitration clauses and implied no-strike clauses would also have to be interpreted in cases seeking specific performance of either type of provision.

The solitary point on which petitioners' brief challenges the reasoning of the majority in *Buffalo Forge* involves the Court's treatment of the proposition that a no-strike promise in a collective bargaining agreement is the *quid pro quo* for the employer's promise to bargain.

Pet. Br. 36-37. Petitioner attributes lower court conflicts over the scope of contractual no-strike clauses to flaws in the *Buffalo Forge* articulation of the *quid pro quo* theory, but its argument distorts this portion of the *Buffalo Forge* opinion. *Buffalo Forge* did not originate the *quid pro quo* theory, nor did it assert that theory as an independently valid premise for denying an injunction unless the strike is over an arbitrable grievance. The majority's discussion on this point (428 U.S. at 407 quoted pp. 4-5 *supra*) is simply part of an entirely accurate description of the reasoning of *Boys Markets* and in no way suggests that no-strike clauses and arbitration clauses are in all instances to be given coterminous application. That is hardly surprising since the analytic distinction between the scope of the no-strike promise and the scope of the arbitration promise was spelled out by the Court in *Lucas Flour*, 369 U.S. at 106 (quoted, p. 9 *supra*) and in *Gateway Coal Co.*, 414 U.S. 368, 382. The contracting parties are free to agree to an arbitration clause that is broader or narrower than the no-strike promise, and there is nothing to even remotely suggest that the Court was unaware of that basic tenet of the national labor policy in deciding *Buffalo Forge*. Alleged misapplications of the *quid pro quo* theory by lower courts thus provide no basis for suspending *stare decisis* principles.

In the end, then, petitioners' brief stands for no more than that there should be a greater opportunity for employers to obtain strike injunctions whether or not arbitration is in the picture. See Pet. Br. at 36-37, 39-40, 43. The petitioners' real disagreement is not with the accommodation struck in *Boys Markets* and *Buffalo Forge* but with Congress' decision not to make § 4 of Norris-LaGuardia entirely inapplicable to suits brought under § 301. To accept petitioners' argument would be to violate the fundamental requirement of judicial deference to the legislative prerogative to establish the national labor policy.

CONCLUSION

For the reasons stated above, and in the respondents' brief, the judgment below should be affirmed.

Respectfully submitted,

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No. 80-1045

In the Supreme Court of the United States

OCTOBER TERM, 1980

JACKSONVILLE BULK TERMINALS, INC., ET AL.,
PETITIONERS

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether a suit under Section 301 of the Labor-Management Relations Act to enforce the no-strike clause of a collective bargaining agreement is a "case involving or growing out of [a] labor dispute" within the meaning of Section 4 of the Norris-LaGuardia Act, notwithstanding that the strike in question was called to advance the union's political goals.

2. Whether a federal court has jurisdiction to enjoin such a contractually-barred strike where the proximate cause of the refusal to work is the union's objection, on political grounds, to cargo-handling assignments and where disputes over work assignments are subject to the mandatory grievance and arbitration clause of the collective bargaining agreement.

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INTEREST OF THE UNITED STATES

The United States has an interest in avoiding interruptions of trade with other countries resulting from actions of private citizens or groups motivated by international political concerns. In the view of the Department of State, such interruptions may be detrimental to this nation's foreign policy interests. The Department of Agriculture, which has an interest in the orderly flow of international trade in agricultural commodities, shares this view. We rec-

ognize and respect the rights of citizens to express their opinions concerning all aspects of foreign policy. Where such views are expressed by labor organizations through work stoppages that violate their collective bargaining agreements, however, First Amendment considerations do not preclude the application of appropriate restraints.

This case involves work stoppages that apparently breached a no-strike clause, that were directed by the International Longshoremen's Association (ILA) as a protest against the Soviet Union's invasion of Afghanistan, and that disrupted the movement of cargo bound for the Soviet Union. While the ILA's views reflect government policy condemning the Soviet invasion, the ILA's expression of those views through work stoppages substantially interferes with the Executive Branch's ability to conduct a flexible but controlled foreign policy involving measured responses to international events and, in particular, to assure compliance with international commitments under agreements with the U.S.S.R.

The particular questions in this case concern the power of a federal court, at the behest of private employers, to enjoin such work stoppages. The United States also has an interest in assuring that where such injunctive relief is granted, it is granted pursuant to a theory, and in a manner, consistent with national labor policy. In particular, the United States is concerned that a proper construction be given the term "labor dispute" in the Norris-LaGuardia Act, since the construction of this term may affect the application of other federal labor laws as well. See, *e.g.*, Section 203 of the Labor-Management Relations Act of 1947, 29 U.S.C. 173, authorizing the Federal Mediation and Conciliation

Service "to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation." [1]

STATEMENT

Petitioner Jacksonville Bulk Terminals, Inc. ("JBT") operates a bulk marine shipping terminal in the Port of Jacksonville, Florida. Through its membership in an employer association, JBT is party to a collective bargaining agreement with respondent Local 1408 of the ILA, the exclusive representative of employees engaged in longshore work at the terminal (Pet. App. 6a, 30a; A. 16-17).[2] Commodities shipped through the terminal include a chemical known as superphosphoric acid, produced by petitioner Hooker Chemical Company for shipment to the Soviet Union under a bilateral trade agreement between the Soviet Union and petitioner Occidental Petroleum Corporation, which owns both JBT and Hooker (Pet. App. 30a).

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[1] Related issues under the Labor-Management Relations Act of 1947, 29 U.S.C. 141 *et seq.*, are raised in *Int'l Longshoremen's Ass'n* v. *Allied International, Inc.*, petition for cert. pending, No. 80-1663 (filed Apr. 3, 1981), and in three secondary boycott cases pending before the National Labor Relations Board, *Int'l Longshoremen's Ass'n (Allied International, Inc.)*, Case No. 1-CC-1753, JD-100-81 (Mar. 16, 1981); *Int'l Longshoremen's Ass'n (Kansas Farm Bureau, Inc., et al.)* Case Nos. 23-CC-764-1 *et seq.*, JD-99-81 (Mar. 16, 1981); *Int'l Longshoremen's Ass'n (Occidental Chemical Co.)*, Case Nos. 10-CC-1141-1 *et seq.*, JD-98-81 (Mar. 16, 1981). Because of the pending secondary boycott cases, the Board takes no position on the issues in the present case.

[2] "Pet. App." refers to the appendix to the petition for certiorari. "A." refers to the joint appendix.

On January 4, 1980, the President of the United States announced imposition of export controls on certain future shipments of grain to the Soviet Union in response to that nation's invasion of Afghanistan. Shortly thereafter, the International President of the ILA announced that the ILA was responding to the Soviet invasion by directing all ILA local affiliates on the Atlantic and Gulf Coasts to refuse to handle *any* cargo either bound for or shipped from the Soviet Union (Pet. App. 2a-3a). In compliance with this order, employees represented by Local 1408 refused to load superphosphoric acid onto three ships at JBT's terminal that were to transport that cargo to the Soviet Union under Occidental's trade agreement (*id.* at 6a, 31a). These events occurred before February 4, 1980, when the export controls were extended to superphosphoric acid (45 Fed. Reg. 8293 (1980); Pet.App. 6a, 7a-8a).

The collective bargaining agreement between JBT and Local 1408 contains a no-strike clause (A. 61)[3] and a mandatory grievance and arbitration clause

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[3] The no-strike clause provides (*ibid.*):

> 15. (A) (1) During the term of this Agreement, the Employer agrees that there shall be no lockouts of the members of the Union and the Union agrees there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slow down, or any other interference or stoppage, total or partial, of the Employer's operation for any cause whatsoever; such causes including but not limited to, unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. The Union shall not be financially responsible for strikes or walkouts not authorized or assented to by the Union.

covering "[m]atters under dispute" between Local 1408 and JBT (A. 62-63).[4] The agreement also contains a management rights clause reserving exclusively to JBT the "[m]anagement of [its] business and the direction of the work force" in the operation of that business (A. 60)[5] and a clause specifically making arbitrable any claims by Local

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[4] The grievance and arbitration clause provides in pertinent part (A. 62):

> 15. (B) Matters under dispute which cannot be promptly settled between the Local and an individual Employer, shall, no later than 48 hours after such discussions, be referred in writing covering the entire grievance to a Port Grievance Committee * * *. In the event this Port Grievance Committee cannot reach an agreement within five days after receipt of the complaint the written record of the dispute shall be referred to the Joint Negotiating Committee, which will function as a District Grievance Committee * * *.
>
> * * * * *
>
> A majority decision of this Committee shall be final and binding on both parties and on all Employers signing this Agreement. In the event the Committee is unable to reach a majority decision within 72 hours after meeting to discuss the case, it shall employ a professional arbitrator * * *.

[5] The management rights clause provides (A. 60):

> 13. (F) The Management of the Employer's business and the direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically provided in the Agreement, all of the rights, powers and authority Employer had prior to signing of this Agreement are retained by Employer.

1408 of hardship resulting from "unreasonable or burdensome conditions" (A. 59-60).[6]

On January 28, 1980, petitioners brought suit against respondents (the ILA, Local 1408, and certain union officials) in the United States District Court for the Middle District of Florida under Section 301 of the Labor-Management Relations Act of 1947 ("LMRA"), 29 U.S.C. 185 (A. 1-14). They sought to compel arbitration "with respect to any grievance(s) relating to the shipment of Hooker's cargo to the Soviet Union through JBT's terminal," to enjoin the ILA-directed refusal to load the Soviet-bound cargo there, and to recover damages (A. 11-13). The complaint alleged, *inter alia*, that through provisions of the collective bargaining agreement, Local 1408 and the ILA had "relinquished the right to engage in a work stoppage of any kind for any

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[6] The clause respecting Union claims that work conditions are unreasonable provides (A. 59-60):

> 13. (D) (5) Where hardship is claimed by Union because of unreasonable or burdensome conditions or where work methods or operations materially change in the future, the problem shall first be discussed between the local and Management involved. In the event an agreement cannot be reached, either party may refer the dispute to the Joint Negotiating Committee and, if the matter cannot be resolved by that Committee, either party may then refer the question to an arbitrator in accordance with the procedure set forth in Clause 15(B).

In 1979, the parties negotiated a special supplemental agreement governing the handling of superphosphoric acid (A. 128-132). It specified that the provisions of the primary agreement would continue to apply except where in conflict with the supplemental agreement (A. 129). Nothing in the supplemental agreement requires that clause 13(D)(5) of the primary agreement be considered inapplicable to the handling of superphosphoric acid.

reason, including any dispute over the assignment of work, operations, or the direction of the work force" (A. 10), and it also stated that "disputes concerning work methods or operations" were subject to mandatory grievance and arbitration procedures (A. 9). It further alleged that the "dispute causing the work stoppage" was subject to the mandatory arbitration clause and that JBT was prepared to submit to arbitration in accordance with that clause (A. 10).

The district court concluded that the underlying dispute was "clearly political" because respondents' "underlying objections [were] not to the policies of [the] employer, but to the political policies of a foreign nation" (Pet. App. 32a). It concluded, accordingly, that the work stoppage did not arise out of a "labor dispute" within the meaning of the anti-injunction provision of the Norris-LaGuardia Act, Section 4, 29 U.S.C. 104, as defined in Section 13(c) of that Act, 29 U.S.C. 113(c), and that the Act therefore did not withdraw the court's jurisdiction to issue an injunction against the work stoppages (Pet. App. 32a-33a). Finding also that the work stoppages appeared to violate the no-strike clause, the court entered a preliminary injunction enjoining any further union actions with respect to loading the three ships in question (*id.* at 26a-28a). Notwithstanding its conclusion that the underlying dispute was political, the court also directed the parties to "process any grievance(s) over the shipment of cargo to and from the Soviet Union" on the three ships involved (*id.* at 27a).

Respondents appealed and the court of appeals reversed in substantial part, vacating the district court's injunction prohibiting the work stoppages

(Pet. App. 1a-25a).[7] The court held that the case involved a "labor dispute" within the meaning of the Norris-LaGuardia Act (*id.* at 14a-16a) and that a strike injunction was thus barred unless the case came within the exception to Norris-LaGuardia recognized in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), which permits injunctions against strikes that violate no-strike clauses where certain conditions are met (Pet. App. 17a-21a). The court noted (*id.* at 20a) that the *Boys Markets* criteria had been "refined" in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), in which this Court held that a federal court may not enjoin a strike that violates a no-strike clause if the strike is not "over" a dispute arbitrable under the collective bargaining agreement. 428 U.S. at 407. Characterizing the underlying dispute in this case as "a complaint against the actions of the U.S.S.R. itself," that could not be resolved by an arbiter, the court of appeals held (Pet. App. 21a-22a) that the *Boys Markets/Buffalo Forge* requirements were not met and the strike injunction therefore could not issue.[8]

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[7] The court of appeals concluded that its jurisdiction was not defeated on grounds of mootness because the case concerned actions capable of repetition but so limited in duration as to evade judicial review (Pet. App. 8a-10a).

[8] The court affirmed the district court's order insofar as it compelled the parties to submit to arbitration the question whether the work stoppages violated the agreement's no-strike clause (Pet. App. 22a). In a companion case, *New Orleans Steamship Ass'n* v. *General Longshore Workers, ILA, Local 1418*, the court held that even where the underlying dispute is political, a strike injunction may issue to enforce an arbitrator's award determining that the strike violates a no-strike clause (Pet. App. 22a-23a).

SUMMARY OF ARGUMENT

We agree with petitioners that the judgment of the court of appeals should be reversed insofar as it vacated the district court's preliminary injunction against respondent's strike. Unlike petitioners, we believe that the case is one involving a "labor dispute" within the meaning of the Norris-LaGuardia Act. We submit, however, that the case comes within the exception recognized in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), to the Norris-LaGuardia prohibition against strike injunctions in labor disputes.

1. Section 4 of the Norris-LaGuardia Act, 29 U.S.C. 104, withdraws jurisdiction from federal courts to issue injunctions against work stoppages "in any case involving or growing out of [a] labor dispute." Section 13(c) of the Act, 29 U.S.C. 113(c), defines labor disputes as including "any controversy concerning terms or conditions of employment." The Act's language is broad because it embodies a congressional intent to take the federal courts "out of the labor injunction business except in the very limited circumstances left open for federal jurisdiction under the * * * Act." *Marine Cooks & Stewards* v. *Panama Steamship Co.*, 362 U.S. 365, 369 (1960). The Norris-LaGuardia Act "does not concern itself with the background or the motives of the dispute." *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552, 561 (1938). So long as the controversy arises in the context of an employer-employee relationship, it is irrelevant that the motives of the labor union involved in the dispute may be political rather than economic.

The present case was brought under Section 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. 185(a), to enforce the no-strike clause of a

collective bargaining agreement. Petitioners' complaint alleged that the underlying dispute involved the refusal of respondent Local 1408 and its members to accept certain assignments that involved handling Soviet-bound cargo and that petitioner JBT was willing to arbitrate the dispute over the assignments under the agreement. Respondents had chosen to strike instead, and the complaint alleged that the work stoppage violated the no-strike clause of the agreement and it sought enforcement of that clause. Thus the case presented a dispute between parties to a labor agreement over its application to a union-directed work stoppage by the employees. This is a classic labor dispute notwithstanding the fact that respondents' objections to handling Soviet-bound cargo are based on their opposition to Soviet aggression.

2. A conclusion that the suit is a case involving a labor dispute within the meaning of the Norris-LaGuardia Act does not, however, resolve the question whether the district court had jurisdiction to enjoin the strike as a breach of the no-strike clause. As this Court held in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770, supra*, the provisions of Norris-LaGuardia must be accommodated to the subsequently enacted provisions of Section 301 of the LMRA and to the strong federal policy favoring arbitration of labor disputes. In light of those considerations, a federal court may enjoin a strike if it appears to violate a no-strike clause, is called over a dispute "subject to adjustment and arbitration under the collective-bargaining agreement and * * * the [employer is] ready to proceed with arbitration * * *." 398 U.S. at 254.

The present case meets that test. The district court found the strike to be a probable violation of the no-strike clause; the strike was called because

of respondents' objections, on political grounds, to work assignments involving Soviet-bound cargo; and disputes over work assignments were subject to the broad mandatory grievance and arbitration clause, which applied to all "[m]atters under dispute." That a grievance stating the employees' objection, on political grounds, to such assignments would have little hope of success is no argument against finding such a grievance arbitrable, given the presumption of arbitrability recognized by this Court. *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 377 (1974).

Because the work stoppage at issue here was a strike over an arbitrable grievance, the court of appeals erred in concluding that *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), barred issuance of the injunction. In *Buffalo Forge*, the Court merely emphasized that a finding that the strike was called over an arbitrable grievance is a precondition to enjoining the strike.

ARGUMENT

I. A SUIT UNDER SECTION 301 OF THE LABOR-MANAGEMENT RELATIONS ACT TO ENFORCE THE NO-STRIKE CLAUSE OF A COLLECTIVE BARGAINING AGREEMENT IS A "CASE INVOLVING OR GROWING OUT OF [A] LABOR DISPUTE" WITHIN THE MEANING OF SECTION 4 OF THE NORRIS-LAGUARDIA ACT, NOTWITHSTANDING THAT THE STRIKE IN QUESTION WAS CALLED TO ADVANCE THE UNION'S POLITICAL GOALS

A. The Norris-LaGuardia Act Has Broad Application To All Disputes Over Work Stoppages Between Employers and the Collective Bargaining Representatives of their Employees

In the Norris-LaGuardia Act, 29 U.S.C. 101 *et seq.*, Congress declared that, except in certain extraordinary circumstances, the federal courts are not to

issue injunctions against labor unions in any "case involving or growing out of any labor dispute," and it restricted the jurisdiction of federal courts accordingly. Section 4, 29 U.S.C. 104.[9] The term "labor dispute" is broadly defined as including "any controversy concerning terms or conditions of employment * * *." Section 13(c), 29 U.S.C. 113(c).[10]

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[9] Section 4 of the Norris-LaGuardia Act, 29 U.S.C. 104, provides in pertinent part:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment; * * *.

[10] Section 13 of the Norris-LaGuardia Act, 29 U.S.C. 113, provides in pertinent part:

> When used in this Act, and for the purposes of this Act—
>
> (a) A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is: (1) between one or more employers or associations of employers and one or more employees or associations of employees; * * * or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).
>
> (b) A person or association shall be held to be a person participating or interested in a labor dispute if

The court of appeals correctly held that this controversy over the legality, under the collective bargaining agreement, of the ILA-directed refusal to handle Soviet-bound cargo involves such a "labor dispute," although, as we show in point II, *infra*, the court erred in vacating the injunction.

In *Marine Cooks & Stewards* v. *Panama Steamship Co.*, 362 U.S. 365 (1960), a case involving picketing of a foreign ship by members of a maritime union protesting the "'loss of their livelihood to foreign flagships with substandard wages or substandard conditions'" (*id.* at 368), this Court emphasized that the language of the Norris-LaGuardia Act was not to be given a cramped construction, observing (*id.* at 369; footnote omitted):

> Th[e] Act's language is broad. The language is broad because Congress was intent upon taking the federal courts out of the labor injunction business except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act. The history and background that led Congress to take this view have been adverted to in a number of prior opinions

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relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

> of this Court in which we refused to give the Act narrow interpretations that would have restored many labor dispute controversies to the courts.

Accord, *Order of R.R. Telegraphers* v. *Chicago & N.W. Ry.*, 362 U.S. 330, 335 (1960); *Milk Wagon Drivers' Union, Local 753* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91, 101 (1940).

That the motives of those involved in a particular dispute may be characterized as political is no automatic bar to its classification as a "labor dispute" for Norris-LaGuardia purposes. Thus, in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938), the Court held that the Act prohibited an injunction against picketing by members of a civic group aimed at inducing a store to employ a greater number of black employees. In explaining why it was immaterial that the interests of the picketers, who were neither union organizers nor store employees, were not economic concerns of the sort commonly associated with labor unions, the Court stated (303 U.S. at 561):

> The Act does not concern itself with the background or the motives of the dispute. The desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness or equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association.

As the Court later explained in *Columbia River Packers Ass'n, Inc.* v. *Hinton*, 315 U.S. 143, 147 (1942), the critical element of *New Negro Alliance*

was that "the employer-employee relationship was the matrix of the controversy." Because that element was missing in *Hinton*, which concerned simply "a dispute among businessmen over the terms of a contract for the sale of fish" (315 U.S. at 145), the Court found Norris-LaGuardia inapplicable there. See also *Bakery Sales Drivers Local Union No. 33* v. *Wagshal*, 333 U.S. 437 (1948) (Norris-LaGuardia Act inapplicable where union's picketing of employer's former customer concerned disagreement with delivery times and payment methods on which the customer had insisted and where no work stoppages, picketing, or other actions were directed at the employer). In no case has the Court ever held that, where employees engage in a union-sanctioned work stoppage, the dispute between the union and the employer over the union's right to call the strike and the employees' right to refuse to perform their work is not a "labor dispute" if the union's motives are "political" rather than "economic." [11]

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[11] Petitioners' suggestion (Pet. Br. 19-20) that this Court's decision in *Eastex, Inc.* v. *NLRB*, 437 U.S. 556 (1978), supports their contention that the existence of political motives takes the work stoppage controversy outside the area of "labor disputes" is incorrect. *Eastex* concerned the question whether employees' distribution of literature in nonworking areas and during nonworking hours of the employer's premises was a protected activity under Section 7 of the National Labor Relations Act, 29 U.S.C. 157. While the Court found the distributions at issue there protected under Section 7, it assumed that in cases in which such literature was only remotely related to "employees' interests as employees," such distributions would not enjoy Section 7 protection. 437 U.S. at 567-568. But the consequence of the latter holding would be simply that the employer would not be prohibited by Section 8(a)(1) of the Act from discharging or disciplining employees for the distributions. It would not establish that

B. This Section 301 Suit To Enforce the No-Strike Clause of the Collective Bargaining Agreement Is a Case Involving a Labor Dispute for Purposes of the Norris-LaGuardia Act

Petitioners' contention (Pet. Br. 10-18) that their lawsuit does not involve a labor dispute within the meaning of the Norris-LaGuardia Act is refuted by the very terms of their complaint. While a court "is clearly empowered to pierce the parties' own characterization of their dispute" (*United States Steel Corp.* v. *United Mine Workers*, 519 F.2d 1236, 1248 (5th Cir. 1975), cert. denied, 428 U.S. 910 (1976)), there is no reason to reject the complaint's description of the particular acts for which petitioners sought relief and the legal theory on which relief was sought.

Petitioners invoked the district court's jurisdiction under Section 301(a) of the LMRA, 29 U.S.C. 185(a), over suits for violation of contracts between employers and labor organizations. Petitioners alleged that the ILA and Local 1408 were refusing to refer employees to JBT to load shipments of superphosphoric acid bound for the Soviet Union and had informed JBT that all ILA members were refusing to handle such cargo (A. 8). Petitioners further alleged (A. 6-7, 9-10) that this constituted a work stoppage in violation of the collective bargaining agreement, which guaranteed JBT the right to decide methods of work or work assignments, required Local 1408 to resolve any disputes about such matters through the grievance and arbitration procedure,

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no labor dispute existed. Similarly, if the employees protested such sanctions under the collective bargaining agreement, an arbitrator might ultimately decide that the sanctions were proper, but this would hardly alter the common-sense understanding of the matter as a labor dispute.

and barred strikes during the term of the contract " 'for any cause whatsoever' " (A. 7).

Petitioners thus alleged the existence of a dispute between the parties to a labor agreement over the application of that agreement to a work stoppage instigated by the collective bargaining representative; and they correctly rested their entitlement to injunctive relief squarely on rights arising from that labor agreement.[12] It is untenable to argue that such a dispute is not a labor dispute because the union's motives for the work stoppage are political. Petitioners did not ask the district court to decide whether the ILA was justified in objecting to the Soviet Union's invasion of Afghanistan; they asked the court to grant specific enforcement of the collective bargaining agreement, through which, they alleged, the employees had waived the right, during the term of the contract, to strike for any reason at all. The fact that, in order to argue the inapplicability of the Norris-LaGuardia Act, petitioners have now chosen to gloss over the theory of their complaint does not alter the character of the case.[13]

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[12] Only JBT, as the employer, was a party to the collective bargaining agreement and thus only it was technically entitled to enforce the contract; JBT, however, was merely a subsidiary of a corporation whose corporate parent was petitioner Hooker, and Hooker, in turn, was owned by petitioner Occidental (Pet. App. 30a). The addition of Hooker and Occidental as plaintiffs did not change the character of the lawsuit, since the suit was alleged to arise solely under Section 301(a) of the LMRA, and only rights under the bargaining agreement were relied on (A. 2-13).

[13] Because of the dispute over the no-strike clause of the collective bargaining agreement, this case is distinguishable from *NLRB* v. *ILA (Ocean Shipping)*, 332 F.2d 992 (4th Cir. 1964), and *Khedivial Line, S.A.E.* v. *Seafarers' Int'l*

The agreement not to strike during the term of the agreement established a contractual condition of employment; the dispute over the legality of the strike is thus literally within the language of the Norris-LaGuardia Act. Where, in addition, as we show below (pages 22-26, *infra*), the strike itself is over an arbitrable dispute, *i.e.*, a dispute about cargo-handling assignments and the employer's right to choose its customers without consulting the union, the statutory language applies a fortiori.

It is, in fact, arguable that a labor dispute for purposes of Norris-LaGuardia might be present even in the absence of a dispute over the terms of the collective bargaining agreement. Regardless of the political character of the ILA's objections to handling Soviet-bound cargo, those objections were expressed in a strike by the employees against their employer

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Union, 278 F.2d 49 (2d Cir. 1960), on which petitioners seek to rely (Pet. Br. 16-18). *Khedivial Line*, in which the Second Circuit stated in dictum that no labor dispute within the meaning of the Norris-LaGuardia Act was presented, was a suit by a foreign shipowner which had no collective bargaining agreement with the picketing union. *Ocean Shipping* was a secondary boycott case in which the National Labor Relations Board sought enforcement of its unfair labor practice order. Whether or not the Fourth Circuit was correct in its holding that the union's politically-inspired refusal to unload Cuba-bound ships did not present a "labor dispute" within the meaning of the National Labor Relations Act (which borrows its definition of "labor dispute" in Section 2(9), 29 U.S.C. 152(9), from the Norris-LaGuardia Act), that decision has not prevented the Fourth Circuit from implicitly finding the existence of a "labor dispute" for Norris-LaGuardia purposes in *Hampton Roads Shipping Ass'n* v. *ILA*, 631 F.2d 282 (4th Cir. 1980), petition for cert. pending, No. 80-1058 (filed Dec. 17, 1980), where, as here, the employer sought enforcement of a no-strike clause.

which focused on particular work assignments. Thus "the employer-employee relationship was the matrix of the controversy," and under this Court's decisions, the case is one involving a labor dispute within the meaning of the Norris-LaGuardia Act. *Columbia River Packers Ass'n, Inc.* v. *Hinton, supra*, 315 U.S. at 147, explaining *New Negro Alliance* v. *Sanitary Grocery Co., supra.*[14] In any event, because of the existence of the dispute over the application of the terms of the agreement that in large part defines the employer-employee relationship, the Court need not reach so far to find that this case is one involving a "labor dispute."

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[14] Because this case involves the employer-employee relationship, petitioners' citation (Pet. Br. 10-11) of *American Federation of Musicians* v. *Carroll*, 391 U.S. 99 (1968), is inapposite. In the particular passage quoted by petitioners (391 U.S. at 106), the Court was stating the criteria for determining not merely whether there was a labor dispute, but whether a certain group of independent contractors was a "labor group" for the purposes of applying the Norris-LaGuardia exemption from Sherman Act coverage. The Court also implied (*ibid.*) that while the Norris-LaGuardia Act reacehd union activity *outside of* "the immediate employer-employee relation" where that activity was aimed at uniformity of labor standards, union activity *within* that relationship was at the core of the Norris-LaGuardia conception of a "labor dispute."

II. A FEDERAL COURT HAS JURISDICTION TO ENJOIN A CONTRACTUALLY-BARRED STRIKE WHERE THE PROXIMATE CAUSE OF THE REFUSAL TO WORK IS THE UNION'S OBJECTION, ON POLITICAL GROUNDS, TO CARGO-HANDLING ASSIGNMENTS AND WHERE DISPUTES OVER WORK ASSIGNMENTS ARE SUBJECT TO THE MANDATORY GRIEVANCE AND ARBITRATION CLAUSE OF THE COLLECTIVE BARGAINING AGREEMENT

As we have argued in point I, *supra*, this case involves a "labor dispute" within the meaning of the Norris-LaGuardia Act; but this conclusion does not finally resolve the question whether the district court was empowered to enjoin the work stoppage at issue here. Resolution of that question requires an examination of the case in light of the principles set out in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), and *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), with respect to an exception to the Norris-LaGuardia Act bar to strike injunctions for strikes that appear to violate the no-strike clause of an applicable collective bargaining agreement. As we show below, this case satisfies all the conditions set down in *Boys Markets* and *Buffalo* Forge for the entry of a strike injunction. The court of appeals, therefore, erred in reversing the judgment of the district court.

In *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770, supra*, the Court "re-examine[d] the holding of *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962), that the anti-injunction provisions of the Norris-LaGuardia Act preclude a federal district court from enjoining a strike in breach of a no-strike obligation under a collective-bargaining agreement, even though that agreement contains provisions, en-

forceable under § 301(a) of the Labor Management Relations Act, 1947, for binding arbitration of the grievance dispute concerning which the strike was called." 398 U.S. at 237-238 (footnotes omitted). The Court overruled *Sinclair* and held that, in order to accommodate the Norris-LaGuardia anti-injunction provisions to the subsequently enacted provisions of Section 301(a) the LMRA and to the strong federal policy favoring arbitration emphasized in the *Steelworkers Trilogy*,[15] it was essential to recognize an exception to the Norris-LaGuardia injunction prohibition for cases in which the employer sought to enforce the union's contractual obligation to arbitrate grievance disputes rather than strike over them. Noting that the effectiveness of arbitration as a substitute for industrial strife would be impaired if an employer were deprived of "a remedial device that merely enforces the obligation that the union freely undertook under a specifically enforceable agreement to submit disputes to arbitration" (*Boys Markets, Inc.* v. *Retail Clerks Union, Local 770, supra*, 398 U.S. at 252-253 (footnote omitted)), the Court held that a federal court *may* enjoin a union strike if it determines "that the grievance in question was subject to adjustment and arbitration under the collective bargaining agreement and that the [employer is] ready to proceed with arbitration * * *." *Id.* at 254.

In *Buffalo Forge Co.* v. *United Steelworkers, supra*, a case in which the employer sought to enjoin a sympathy strike, the Court reaffirmed the *Boys Markets* requirement that there be a showing that the

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[15] *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

grievance underlying a strike is arbitrable before the strike is enjoined as a violation of a no-strike clause. The striking employees in *Buffalo Forge* had no grievance of their own against the employer to submit to arbitration but were merely striking in support of an economic strike called by sister locals. The Court reasoned (428 U.S. at 407-408; emphasis in original) that because the respondent union's strike "was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract," it did not constitute an evasion of "an obligation to arbitrate." The Court accordingly held that the strike could not be enjoined under *Boys Markets* (*id.* at 412-413).

Contrary to the decision of the court of appeals (Pet. App. 21a-22a), the present case meets the *Boys Market/Buffalo Forge* test. The source of the court's error is its failure to recognize that there are, in fact, *several* underlying disputes, at least one of which is arguably arbitrable. There are disputes of a sort between the Soviet Union and the country it invaded and between the Soviet Union and the ILA, which objects to the invasion as an unjustified act of aggression. To be sure, these matters are not within the competence of any American labor arbitrator, and submitting them to arbitration would be an absurdity. But the ILA's objection to the Soviet invasion led to its conclusion that the handling of Soviet-bound cargo is objectionable. Whether respondents had any right under the collective bargaining agreement to dictate JBT's selection of its customers or to object to cargo-handling assignments where the cargo is, by virtue of its destination, politically offensive, *is* a question that an arbitrator may resolve. The arbitration and grievance clause

is a broad one, applying to all "[m]atters under dispute" (see pages 4-5, *supra*); and the management rights clause and the clause providing for arbitration of disputes over union claims that "hardship" has been created by "unreasonable" work conditions (see pages 5-6, *supra*) supply the arbitrator with a basis in the collective bargaining agreement for deciding the dispute.

Given those provisions of the collective bargaining agreement and the general presumption of arbitrability that this Court has recognized (see *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 377 (1974)), an arbitrable dispute exists, and the arbitrator's jurisdiction would not be ousted by a showing that the ILA's motives for objecting to the cargo-handling assignments are political. Cases involving work scheduling or work assignment disputes that have arisen because of political or religious or philosophical convictions held by employees are hardly unknown to the arbitral forum. See, *e.g.*, *Norris Industries*, 68 Lab. Arb. Rep. (BNA) 171 (1977) (discharge of employee who took two hours off Wednesday night shifts to attend Bible study meetings that she regarded as a religious obligation); *Rockford Newspapers, Inc.*, 63 Lab. Arb. Rep. (BNA) 251 (1974) (discipline of reporter who refused to write a story on the grounds that it would violate his professional integrity); *Ralston Purina Co.*, 61 Lab. Arb. Rep. (BNA) 14 (1973) (suspension of employee who refused, on moral and political grounds, to raise and lower the American flag outside the plant); *Reynolds Metals Co.*, 56 Lab. Arb. Rep. (BNA) 592 (1967) (continuing refusal, on religious grounds, to work Sunday overtime). In such cases the arbitrators are not called upon to decide the

merits of the moral or religious or political beliefs held by the employees; they decide whether, under the collective bargaining agreement, the employees may claim exemption on such grounds from the work assignments or work schedules in question and whether the employers' sanctions are justified. Like the claims in those cases, the dispute underlying this case over cargo-handling assignments—a dispute that petitioners were willing to arbitrate (A. 9)—is "grist in the mills of the arbitrators." *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 584 (1960) (footnote omitted).[16]

Whether respondents would prevail in arbitration on a claim that it is unreasonable, within the meaning of the collective bargaining agreement, for JBT to require ILA employees to handle Soviet-bound cargo and that JBT should thus select only customers who do not transport such shipments is doubtful. But this is not a valid reason for declaring the dispute inarbitrable. As this Court observed in *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 567-568 (1960) (footnotes omitted):

> The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its

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[16] In their brief in this Court, petitioners speak only of the contract's guarantee, in the management rights clause, of JBT's right to choose its customers; they do not refer, as did their complaint (A. 9), to the clause providing for arbitration of claims by the union that hardship exists by virtue of "unreasonable or burdensome conditions" (Pet. Br. 25-31). We assume that this does not indicate that petitioners have disavowed the allegations of their complaint and would now be unwilling to arbitrate such a claim as a condition to enforcement of the no-strike clause.

> face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. * * * .
>
> The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values of which those who are not a part of the plant environment may be quite unaware.

In the present case, of course, the court of appeals did not directly run afoul of this admonition because it did not consider whether respondents, rather than engaging in a work stoppage, might have submitted to arbitration a claim that ILA members employed by JBT should not be asked to load Soviet-bound cargo. But in a case presenting a *Boys Markets* injunction issue, a failure even to consider the arbitrability of such a claim is at least as serious an error as invading the province of the arbitrator and deciding that the claim is not arbitrable because it is not meritorious.

In sum, petitioners in this case satisfied both the literal requirements and the policy concerns expressed in *Boys Markets* and *Buffalo Forge* with respect to specific enforcement of a no-strike clause, pending arbitration. As the Court explained in *Buffalo Forge* (428 U.S. at 407):

> The driving force behind *Boys Markets* was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties. Only to that extent

> was it held necessary to accommodate § 4 of the Norris-LaGuardia Act to § 301 of the Labor Management Relations Act and to lift the former's ban against the issuance of injunctions in labor disputes. Striking over an arbitrable dispute would interfere with and frustrate the arbitral processes by which the parties had chosen to settle a dispute.

In the present case, as we have shown, the collective bargaining agreement provided a private dispute settlement mechanism to which respondents might have resorted. Their decision to call a strike rather than run the risk of losing in arbitration frustrated the contractual grievance and arbitration process. The issuance of an injunction compelling them, pending arbitration, to abide by the no-strike clause to which they agreed thus serves the policy of the federal labor laws.[17] Accordingly, the Court need not overrule its decision in *Buffalo Forge*, as petitioners urge (Pet. Br. 31-43),in order to hold that the court of appeals erred in vacating the district court's judgment enforcing the no-strike clause.

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[17] Should a union, through collective bargaining, achieve a contractual right to refuse work assignments on conscientious grounds such as those involved in this case, and subsequently win an arbitration award based on that contractual right, that result would also serve the policy of the federal labor laws. Moreover, such a work stoppage would be based on a determination of private contractual rights rather than the refusal of a federal court to enjoin a contractually-barred strike, and might for that reason be somewhat less likely to be viewed by other nations as reflecting an extension of United States foreign policy.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed insofar as it ordered the district court to vacate its injunction against respondents' strike.

Respectfully submitted.

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